

United States  
Circuit Court of Appeals

For the Ninth Circuit.

Vol  
1974  
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ELECTRICAL RESEARCH PRODUCTS, INC.,  
a corporation,

Appellant,

vs.

W. D. GROSS,

Appellee.

Transcript of Record

In Two Volumes

VOLUME I


Pages 1 to 528

Upon Appeal from the District Court of the United  
States for the Territory of Alaska  
Division Number One

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Division Number One



# INDEX

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 3167A

ELECTRICAL RESEARCH PRODUCTS, INC.,  
a corporation,

Plaintiff,

vs.

W. D. GROSS,

Defendant.

AMENDED COMPLAINT.

Comes now the plaintiff, and, for cause of action,  
complains and alleges:

## FIRST CAUSE OF ACTION:

## I.

That plaintiff is now and at all the times herein-after mentioned was a corporation duly organized and existing under the laws of the State of Delaware; that plaintiff is duly authorized to engage in business in the Territory of Alaska, and that it has paid its corporate annual license tax last due to said Territory.

## II.

That, for an in consideration of their mutual covenants, stipulations and representations as therein set forth, plaintiff and defendant heretofore and on or about March 28, 1929, entered into a certain written agreement, and thereafter and on or about September 4, 1929, mutually modified said agreement, in which agreement, as so modified, they mutually agreed, among other things, that plaintiff did thereby grant defendant a non-exclusive, non-assignable license to use in his theatre in Juneau, Alaska, which is commonly known as the "Coliseum Theatre", certain equipment more particularly designated as "Type 2-S equipment designed for use with two simplex projectors for film and disc reproduction" for the electrical reproduction of sound in synchronization with, or as incidental to, the exhibition of motion pictures, or any performance given in conjunction therewith, for a term of ten (10) [1\*] years in said theatre, subject to the terms of said

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\*Page numbering appearing at the foot of page of original certified Transcript of Record.



agreement, and that during the life of said license, plaintiff should make inspections and minor adjustments in said equipment after it was installed, and that defendant should pay plaintiff for its services in making said inspections and minor adjustments in said equipment the sum of \$29.75 per week, payable, after the first two weeks of said term, in advance on Saturday of each week, and that the defendant should pay the plaintiff the latter's installation charges as from time to time established for any additional equipment or spare or renewal parts, furnished or supplied by plaintiff, upon delivery thereof, and to pay plaintiff the transportation charges thereon, and that the title to and ownership of all equipment at any time furnished by plaintiff under said agreement and also of all tools of all kinds, drawings, prints and written descriptions and instructions should remain vested in plaintiff, and that said agreement and the license thereby granted should at plaintiff's option, terminate and come to an end upon the happening of the following, among other events, which in said agreement were designated to be events of default, to-wit: Upon the failure or refusal of the defendant for any reason to pay any of the items or sums in said agreement by him agreed to be paid, within five (5) days after such item or sum shall become due, and that time should be of the essence of said provision in said agreement relating to the making of the failure or refusal of the defendant for any reason to pay any of the items or sums in said agreement by him agreed to be paid an event of

default under the terms of said agreement, and that, in the event of a default in any of the events so designated to be events of default, at any time during the term of said license, said license and all obligations imposed upon plaintiff by virtue of said agreement should, at plaintiff's option and whether or not it terminated said agreement or removed said equipment as in said agreement provided, be suspended during the continuance of such default, [2] and further that "upon termination or expiration of this license by lapse of time or otherwise, the Exhibitor (by which name the defendant was designated in said agreement) will surrender up and deliver possession of the Equipment to Products (by which name plaintiff was designated in said agreement) in good order and condition, reasonable wear and tear and obsolescence due to proper use thereof in the manner and place and for the purpose set forth in this agreement only excepted, and Products (by which name plaintiff was designated in said agreement) may repossess the equipment and may, for the purpose of reducing the same to possession, enter the Theatre or any other premises where said Equipment may be and without any legal proceedings whatever possess and remove said Equipment, and the Exhibitor (by which name the defendant was designated in said agreement) agrees to cooperate in such removal. If this license shall be terminated by default, or if the Exhibitor (by which name the defendant was designated in said agreement) permits any of the events of default, hereinbefore enumerated, to occur whether or not

Products (by which name plaintiff was designated in said agreement) shall exercise the option to terminate this agreement, Products (by which name plaintiff was designated in said agreement) shall thereupon have the right without notice to take immediate possession of said Equipment, or any part thereof, and for that purpose may pursue the same wherever it or any part thereof may be found and may enter, with the aid and assistance of any person or persons, the Theatre or other premises of the Exhibitor (by which name the defendant was designated in said agreement) and such place or places whatsoever, whether belonging to the Exhibitor (by which name the defendant was designated in said agreement) or not, in which the Equipment or any part thereof may be placed, and may take and seize the same to its own proper use forever, free from any right of the Exhibitor (by which name the defendant was designated in said agreement) under this agreement. Products (by which name plaintiff was designated in said agreement) shall also have the right in like manner to enter the said premises and remove the Equipment in the event [3] of the said premises being destroyed or damaged by fire, or otherwise, to an extent which, in the opinion of Products (by which name plaintiff was designated in said agreement) endangers the Equipment. The Exhibitor (by which name the defendant was designated in said agreement) expressly covenants that in any such event no claim will be made for damage on account of such removal or otherwise, and the

Exhibitor (by which name the defendant was designated in said agreement) further agrees that it will hold and save harmless Products (by which name plaintiff was designated in said agreement) from and against any and all claims for damages by any parties whatsoever on account of such removal."

### III.

That said equipment thereafter and more than two weeks prior to May 24, 1930, was installed, and at all times since has been and does now continue to be installed, in said theatre and that thereafter plaintiff fully and faithfully performed the terms of said agreement, as so modified, and said inspections and minor adjustments in said equipment in said theatre for the period from May 24, 1930, to and including March 7, 1931, but that defendant has failed and refused to pay and has defaulted and now continues in default in the payment of said weekly sum of \$29.75 for each and all of the weeks embraced within said period and that the sum of \$1.219.75, i.e., \$29.75 for each of the forty-one (41) weeks of said period, is wholly unpaid and is now due and owing by defendant to plaintiff, and became due and owing at the following times, to-wit: The sum of \$29.75 upon May 31, 1930, and a like sum chronologically at the expiration of each and every successive seven days thereafter up to and including March 7, 1931, and that more than five (5) days have elapsed since each of the aforesaid weekly sums of \$29.75 became due and payable under said agreement as so modified; that plaintiff furnished and

supplied defendant from time to time between May 20, 1930, and February 17, 1931, with additional equipment an itemized statement whereof, together with plaintiff's list installation charges therefor, established for and during said time, is hereunto [4] attached, marked Exhibit 1, and specifically made a part hereof, and that the title to and ownership of all said additional equipment now remains vested in plaintiff, and that plaintiff's list installation charges therefor, including transportation charges amount to \$32.52, no part of which has been paid except \$3.43, leaving a balance of \$29.09, all of which became due and owing at the respective dates, as shown upon said Exhibit 1, upon which said additional equipment was furnished and supplied, and that more than five days have elapsed since each of said sums became due and payable under said agreement as so modified.

#### IV.

That the actual value of said equipment is \$6,600.00.

#### V.

That the plaintiff is the owner of said equipment and is now lawfully entitled to the possession thereof by reason of its ownership thereof and by virtue of the provisions of said agreement as hereinabove stated, but that said property is wrongfully detained by the defendant from the plaintiff; that plaintiff is uninformd as to the cause of defendant's detention of said property other than, according to its best knowledge, information and belief, defendant refuses to perform and carry out the terms of said agree-

ment as so modified; that said property has not been taken for a tax, assessment or find, pursuant to a statute, or seized under an execution or attachment against the property of this plaintiff.

#### VI.

That the rental value of said equipment is \$1,-050.00 per year, or for any part of a year, and that plaintiff has been damaged by defendant's detention of said property in the sum of \$1,050.00 for the year commencing March 7, 1931, or such portion thereof as defendant detains said property, and plaintiff will continue to be damaged at said rate during each successive year or fraction of a year that defendant continues to detain said property.

#### VII.

That plaintiff has been compelled to employ an attorney to institute and prosecute this suit; and that \$600.00 is a [5] reasonable attorney's fee for it to pay to its said attorney.

#### VIII.

That plaintiff heretofore, to wit, on March 27, 1931, made demand upon defendant that he return the aforesaid property, but that defendant has refused to return and has not returned said property or any part thereof.

### SECOND CAUSE OF ACTION

#### I.

That plaintiff is now and at all the times herein-after mentioned was a corporation duly organized

and existing under the laws of the State of Delaware; that plaintiff is duly authorized to engage in business in the Territory of Alaska, and that it has paid its corporate annual license tax last due to said Territory.

## II.

That, for and in consideration of their mutual covenants, stipulations and representation as therein set forth, plaintiff and defendant heretofore and on or about March 28, 1929, entered into a certain written agreement, and thereafter and on or about September 4, 1929, mutually modified said agreement, in which agreement, as so modified, they mutually agreed, among other things, that plaintiff did thereby grant defendant a non-exclusive, non-assignable license to use in his theatre in Ketchikan, Alaska, which is commonly known as the "Coliseum Theatre", certain equipment more particularly designated as "Type 2-S equipment designed for use with two simplex projectors for film and disc reproduction" for the electrical reproduction of sound in synchronization with, or as incidental to, the exhibition of motion pictures, or any performance given in conjunction therewith, for a term or ten (10) years in said theatre, subject to the terms of said agreement, and that, during the life of said license, plaintiff should make inspections and minor adjustments in said equipment after it was installed, and that defendant should pay plaintiff for its services in making said inspections and minor adjustments in said equipment the sum of \$29.75 per week, payable, after the first two weeks of said term, in

advance on Saturday of each week, and that the defendant [6] should pay the plaintiff the latter's installation charges as from time to time established for any additional equipment or spare or renewal parts, furnished or supplied by plaintiff, upon delivery thereof, and to pay plaintiff the transportation charges thereon, and that the title to and ownership of all equipment at any time furnished by plaintiff under said agreement and also of all tools of all kinds, drawings, prints and written descriptions and instructions should remain vested in plaintiff, and that said agreement and the license thereby granted should at plaintiff's option, terminate and come to an end upon the happening of the following, among other events, which in said agreement were designated to be events of default, to-wit: Upon the failure or refusal of the defendant for any reason to pay any of the items or sums in said agreement by him agreed to be paid, within five (5) days after such item or sum shall become due, and that time should be of the essence of said provision in said agreement relating to the making of the failure or refusal of the defendant for any reason to pay any of the items or sums in said agreement by him agreed to be paid an event of default under the terms of said agreement, and that, in the event of a default in any of the events so designated to be events of default, at any time during the term of said license, said license and all obligations imposed upon plaintiff by virtue of said agreement should, at plaintiff's option and whether or not it terminated said agreement or removed said equip-



ment as in said agreement provided, be suspended during the continuance of such default, and further that "upon termination or expiration of this license by lapse of time or otherwise, the Exhibitor (by which name the defendant was designated in said agreement) will surrender up and deliver possession of the Equipment to Products (by which name plaintiff was designated in said agreement), in good order and condition, reasonable wear and tear and obsolescence due to proper use thereof in the manner and place and for the purpose set forth in this agreement only excepted, and Products (by which name plaintiff was designated in said agreement) may repossess the equipment and may, for the purpose of reducing the same to [7] possession, enter the Theatre or any other premises where said Equipment may be and without any legal proceedings whatever possess and remove said Equipment, and the Exhibitor (by which name the defendant was designated in said agreement) agrees to cooperate in such removal. If this license shall be terminated by default, or if the Exhibitor (by which name the defendant was designated in said agreement) permits any of the events of default, hereinbefore enumerated, to occur, whether or not Products (by which name plaintiff was designated in said agreement) shall exercise the option to terminate this agreement, Products (by which name plaintiff was designated in said agreement) shall thereupon have the right without notice to take immediate possession of said Equipment, or any part thereof, and for that purpose may pursue

the same wherever it or any part thereof may be found and may enter, with the aid and assistance of any person or persons, the Theatre or other premises of the Exhibitor (by which name the defendant was designated in said agreement) and such place or places whatsoever, whether belonging to the Exhibitor (by which name the defendant was designated in said agreement) or not, in which the Equipment or any part thereof may be placed, and may take and seize the same to its own proper use forever; free from any right of the Exhibitor (by which name the defendant was designated in said agreement) under this agreement. Products (by which name plaintiff was designated in said agreement) shall also have the right in like manner to enter the said premises and remove the Equipment in the event of the said premises being destroyed or damaged by fire, or otherwise, to an extent which, in the opinion of Products (by which name plaintiff was designated in said agreement) endangers the Equipment. The Exhibitor (by which name the defendant was designated in said agreement) expressly covenants that in any such event no claim will be made for damage on account of such removal or otherwise, and the Exhibitor (by which name the defendant was designated in said agreement) further agrees that it will hold and save harmless Products (by which name plaintiff was designated in said agreement) from and against any and all claims for damages by any parties whatsoever on account of such removal." [8]

## III.

That said equipment thereafter and more than two weeks prior to May 24, 1930, was installed, and at all times since has been and does now continue to be installed, in said theatre and that thereafter plaintiff fully and faithfully performed the terms of said agreement, as so modified, and said inspections and minor adjustments in said equipment in said theatre for the period from May 24, 1930, to and including March 7, 1931, but that defendant has failed and refused to pay and has defaulted and now continues in default in the payment of said weekly sum of \$29.75 for each and all of the weeks embraced within said period and that the sum of \$1,219.75, i.e., \$29.75 for each of the forty-one (41) weeks of said period, is wholly unpaid and is now due and owing by defendant to plaintiff, and became due and owing at the following times, to-wit: The sum of \$29.75 upon May 31, 1930, and a like sum chronologically at the expiration of each and every successive seven days thereafter up to and including March 7, 1931, and that more than five (5) days have elapsed since each of the aforesaid weekly sums of \$29.75 became due and payable under said agreement as so modified; that plaintiff furnished and supplied defendant from time to time between April 7, 1930, and February 18, 1931, with additional equipment an itemized statement whereof, together with plaintiff's list installation charges therefor, established for and during said time, is hereunto attached, marked Exhibit 2, and specifically made a part hereof, and that the title to and ownership of

all said additional equipment now remains vested in plaintiff, and that plaintiff's list installation charges therefor, including transportation charges, amount to \$68.61, no part of which has been paid except \$6.69, leaving a balance of \$61.92, all of which became due and owing at the respective dates, as shown upon said Exhibit 2, upon which said additional equipment was furnished and supplied, and that more than five days have elapsed since each of said sums became due and payable under said agreement as so modified. [9]

## IV.

That the actual value of said equipment is \$6,600.00.

## V.

That the plaintiff is the owner of said equipment and is now lawfully entitled to the possession thereof by reason of its ownership thereof and by virtue of the provisions of said agreement as hereinabove stated, but that said property is wrongfully detained by the defendant from the plaintiff; that plaintiff is uniformed as to the cause of defendant's detention of said property other than, according to its best knowledge, information and belief, defendant refuses to perform and carry out the terms of said agreement as so modified; that said property has not been taken for a tax, assessment or fine, pursuant to a statute, or seized under an execution or attachment against the property of this plaintiff.

## VI.

That the rental value of said equipment is \$1,050.00 per year, or for any part of a year, and that

plaintiff has been damaged by defendant's detention of said property in the sum of \$1,050.00 for the year commencing March 7, 1931, or such portion thereof as defendant detains said property, and plaintiff will continue to be damaged at said rate during each successive year or fraction of a year that defendant continues to detain said property.

#### VII.

That plaintiff has been compelled to employ an attorney to institute and prosecute this suit; and that \$600.00 is a reasonable attorney's fee for it to pay to its said attorney.

#### VIII.

That plaintiff heretofore, to-wit, on March 27, 1931, made demand upon defendant that he return the aforesaid property, but that defendant has refused to and has not returned said property or any part thereof.

WHEREFORE, Plaintiff prays judgment: [10]

1. For the delivery to it of that certain personal property now situated in the Coliseum Theatre at Juneau, Alaska, and more particularly described as follows, to-wit:

“That certain equipment more particularly designated as “Type 2-S equipment designed for use with two simplex projectors for film and disc reproduction” for the electrical reproduction of sound in synchronization with, or as incidental to, the exhibition of motion pictures, or any per-

formance given in conjunction therewith, now situated in the Coliseum Theatre in Juneau, Alaska;”

or, if return thereof cannot be had, for the value of said personal property, to-wit, \$6,600.00, and for \$1050.00 damages and a similar sum as damages for each successive year or fraction of a year that defendant continues to detain said property.

2. For the delivery to it of that certain personal property now situated in the Coliseum Theatre at Ketchikan, Alaska, and more particularly described as follows, to-wit:

“That certain equipment more particularly designated as ‘Type 2-S equipment designed for use with two simplex projectors for film and disc reproduction’ for the electrical reproduction of sound in synchronization with, or as incidental to, the exhibition of motion pictures, or any performance given in conjunction therewith, now situated in the Coliseum Theatre in Ketchikan, Alaska;”

or, if return thereof cannot be had, for the value of said personal property, to-wit, \$6,600.00, and for \$1050.00 damages and a similar sum as damages for each successive year or fraction of a year that defendant continues to detain said property.

3. For plaintiff’s costs and disbursements herein, including \$600.00 as an attorney’s fee on its First Cause of Action herein, and \$600.00 as an attorney’s fee on its Second Cause of Action herein, and for

such other and further relief as may be meet and just.

R. E. ROBERTSON,  
Attorney for Plaintiff. [11]

United States of America,  
Territory of Alaska—ss.

R. E. ROBERTSON, being first duly sworn on oath, deposes and says: That he is a citizen of the United States, over the age of 21 years, a resident of the Territory of Alaska, and attorney for the within named corporate plaintiff; that he has read the foregoing amended complaint, knows the contents thereof and that the same is true as he verily believes; that he makes this verification on behalf of plaintiff for the reason that there is not now in Juneau, Alaska, the place at which this verification is made, any officer thereof upon whom service of a summons might be made other than this affiant, who is the statutory agent for service of process upon said corporate plaintiff in the Territory of Alaska.

R. E. ROBERTSON.

Subscribed and sworn to before me this 20 day of April, 1931.

[Seal]

M. E. MONAGLE,  
Notary Public for Alaska. My commission expires  
March 1st, 1934. [12]

EXHIBIT I.  
COLISEUM THEATRE  
Juneau, Alaska  
ADDITIONAL EQUIPMENT SUPPLIED AND  
FURNISHED

<i>Date</i>	<i>Item</i>	<i>Amount</i>	<i>Total</i>
5/20/1930	2 Grid Leaks	.73	
	1 Coupling Assembly	1.00	
	Postage	.30	\$ 2.03
6/23/1930	10 Fuses		
	2 Battery Straps		
	8 Nuts and Bolts		4.69
6/26/1930	6 KS-6243 Lamps	6.00	
	1 Felt Washer	.10	
	Postage	.33	6.43
9/23/1930	2 Cords	.40	
	Washers & Coupling	1.20	
	10 Fuses	.70	
	Postage	.42	2.72
11/11/1930	6 KS 6243 Lamps	6.00	
	2-239 A Vacuum Tubes	8.40	
	Postage	.50	14.90
1/15/1931	6-703 Batteries	1.17	
	Postage	.37	1.54
2/17/1931	2-S Shaped Springs		.21
			\$32.52
	Less cash received		3.43
			\$29.09



EXHIBIT II.  
COLISEUM THEATRE  
Ketchikan, Alaska  
ADDITIONAL EQUIPMENT SUPPLIED AND  
FURNISHED

<i>Date</i>	<i>Item</i>	<i>Amount</i>	<i>Total</i>
4/ 7/1933	6-KS 6243 Lamps	\$ 7.50	
	3-Guilder Rollers & Pad Assembly	4.35	
	Postage	.23	\$12.08
5/21/1930	6-KS-6243 Lamps	7.50	
	Postage	.33	7.83
6/16/1930	20-Fuses	3.13	
	6-KS-6243 Lamps	6.00	9.13
6/26/1930	2-Gears for 712 A Drives	5.00	
	Postage	.05	5.05
6/24/1930	2-Gears for 712-A Drives	5.00	
	Postage	.18	5.18
8/ 5/1930	2-KS 6684 Rheostats	8.70	
	Postage	.45	9.15
7/16/1930	3-239 A Vacuum Tubes at 4.20	12.60	
	20 Plug Fuses at .04	.80	13.40
11/ 1/1930	6-KS 6243 Lamps	6.00	
	2-Rubber Connectors	.14	6.14
2/18/1931	1 Lb. Grease	.30	
	8 Oz. Graphitoleo	.35	.65
			\$68.61
	Less cash received		6.69
			\$61.92

[Endorsed]: Filed Apr. 27, 1931. [14]

[Title of Court and Cause.]

AMENDED ANSWER.

Comes now the defendant and for answer to the amended complaint of the plaintiff herein admits, denies and alleges as follows:

ANSWER TO FIRST CAUSE OF ACTION

Answering the allegations of the first cause of action set forth in the amended complaint, the defendant admits, denies and alleges as follows:

I.

The defendant admits the allegations contained in paragraph I of said first cause of action.

II.

Referring to the allegations of paragraph II of the first cause of action set up in the plaintiff's amended complaint, the defendant admits that on or about the 28th day of March, 1929, the plaintiff and defendant entered into a written contract. But the defendant denies that thereafter on or about September 4, 1929, or at any other time or times or at all, said agreement was modified in writing and otherwise or at all. And the defendant denies that any modified agreement exists between him and the plaintiff. The defendant admits that under the terms of the original contract between him and the plaintiff, he was given a license to use certain equipment designated as TYPE 2-S equipment, for the terms of ten years, in the Coliseum Theatre at

Juneau. But the defendant denies that this license was given under the terms of any modified agreement and he denies that it was held subject to the terms of a modified agreement or in any other manner except under the terms of the original contract executed by the parties on or about the 28th day of March, 1929, a copy of which is attached to this answer, [15] marked EXHIBIT "A". And the defendant denies that in accordance with the terms of any modified agreement or any other agreement at all, he agreed to pay plaintiff for services in making minor adjustments and inspections to said equipment, the sum of Twenty-nine Dollars seventy-five cents (\$29.75) per week, or any other sum whatsoever, payable after the first two weeks of the term mentioned or at any other time or in any other manner. The defendant denies that he agreed to pay said sum of \$29.75 per week or any other sum or sums in advance on Saturday of each week or at any other time or in any other manner. The defendant denies that under the agreement mentioned or under any other agreement, he agreed to pay the plaintiff the latter's installation charges as from time to time established under the terms of any amended agreement. And the defendant denies that he agreed to pay the plaintiff any transportation charges under the terms of such an amended agreement. And the defendant denies that the title to or ownership of said equipment furnished by plaintiff under any amended agreement or any other agreement, and that title to tools, drawings, prints

or written descriptions or instructions were agreed, under the terms of any amended agreement or any agreement whatsoever, to remain vested in plaintiff. In this connection the defendant denies that there was or is any modified agreement between him and the plaintiff, or any other agreement or agreements save and except the original contract made between the parties on or about the 28th day of March, 1929, a copy of which is attached hereto, marked EXHIBIT "A", which is hereby referred to and made a part hereof. The defendant denies that the said agreement or license should at the plaintiff's option, terminate and come to an end upon the refusal of the defendant, for any reason, to pay any of the items or sums set forth in this cause of action as constituting default of the defendant, within five days after such items or sums shall become due, and at any other time. The defendant denies that time was or is to be considered of the essence of said agreement relating to the making or refusal to make the payment or payments of the money referred to in this cause of action. And the defendant denies each and every other allegation in said paragraph contained. [16]

### III.

Referring to the allegations of paragraph III of said first cause of action, the defendant admits that the plaintiff installed equipment in his theatre at Juneau, more than two weeks prior to May 24, 1930, but he denies that said equipment has at all

times since continued to be installed in said theatre. And the defendant further denies that plaintiff has fully or faithfully, *at* at all, performed or furnished inspections or minor adjustments to said equipment in said theatre, or elsewhere, for a period from May 4, 1930, to and including March 7, 1931, or for or during any other time or times or at all. In this connection the defendant further denies that the plaintiff has furnished him with any inspection or service whatsoever during the period mentioned or at all. And the defendant denies that there is now due the plaintiff from him, the sum of One Thousand Two Hundred Nineteen Dollars seventy-five cents (\$1,219.75), or any other sum or sums whatsoever; denies that said sum mentioned in said paragraph or any other sum or sums became due and owing on May 31, 1930, or at any other time or times; denies that a like sum or any other sum chronologically or otherwise became due the plaintiff from the defendant at the expiration or at the end of each and every successive seven days, from May 31, 1930, up to or including March 7, 1931, or at any other time or times, or at all. In this connection the defendant denies that he is indebted to the plaintiff in any sum or sums whatsoever, either on account of the matters or things referred to in paragraph III or at all; denies that he has defaulted; and further denies that he now continues in default for want of payments in said paragraph mentioned; denies that more than five days have elapsed since any of the therein mentioned weekly

sum of \$29.75 became due and payable under said agreement; denies that any sum became due or is due; denies that said agreement was modified; denies that the sum of \$29.09, or any other sum, became due and owing at the respective dates shown on EXHIBIT "A", or at any other time; [17] denies that more than five days have elapsed since any of the sums became due and payable under said agreement; denies that said agreement was modified.

#### IV.

For answer to paragraph IV of the first cause of action set forth in the amended complaint herein, the defendant denies that the actual value of said equipment is any sum less than \$10,077.00.

#### V.

For answer to paragraph V of the first cause of action set up in the amended complaint herein, the defendant admits that the plaintiff is the owner of said equipment, but denies that the plaintiff is lawfully entitled to the possession thereof by reason of the ownership thereof, or by reason of the provisions of said agreement; denies that said property is unlawfully detained by the defendant; denies that the defendant refuses to perform and carry out the terms of his agreement, but denies that the agreement, EXHIBIT "A" attached hereto, has been modified. Defendant admits the said property has not been taken for a tax, assessment or fine pursuant to a statute, or seized under an execution and attachment against the property.

## VI.

For answer to paragraph VI of the first cause of action set up in the amended complaint, the defendant denies that the rental value of equipment is any sum less than \$1,250.00 per year; denies that the rental value for a part of a year is equal to a whole year, or any sum greater than the percentage the part of the year bears to the whole year. The defendant denies that the plaintiff has been damaged, by the defendant's detention of said property, in the sum of \$1,050.00, or any other sum; and denies that the plaintiff will continue to be damaged at said rate during each successive year or fraction thereof at said rate, or any other rate for each said year and fraction of the year, or any other time.

## VII.

For answer to paragraph VII of the first cause of action set up in the amended complaint, the defendant denies the [18] allegations therein contained.

## VIII.

For answer to paragraph VIII of the first cause of action set up in the amended complaint herein, the defendant admits that the plaintiff made a demand upon the defendant for the return of the property therein mentioned; admits that he has refused to return said property; and admits that he had not returned said property or any part thereof at the time this cause of action was begun, nor at any other time, except as hereinafter stated.

## FIRST AFFIRMATIVE DEFENSE.

The defendant further answering the first cause of action set up in the amended complaint of the plaintiff herein and by way of affirmative defense, alleges:

## I.

That under date of the 28th day of March, 1929, the plaintiff and the defendant entered into a contract, a copy of which is attached hereto marked EXHIBIT "A" which is hereby referred to and made a part hereof.

## II.

That the agreement referred to in paragraph I hereof is still in full force and effect and has never been modified, rescinded, or revoked.

## III.

Referring to the allegations of paragraph II of the first cause of action embodied in plaintiff's amended complaint herein, where it is alleged that after the agreement of March 28, 1929, had been executed, and on or about September 4, 1929, the agreement of March 28, 1929, was mutually modified. And referring also to the paper writing filed by the plaintiff and marked EXHIBIT "2", which was served upon the defendant by the plaintiff in response to a request for a copy of the agreement, alleged to have been executed on or about September 4, 1929, by which the previous agreement of March 28, 1929 is alleged to have been mutually modified, the defendant avers as follows: [19]



(a) That the paper writing so served upon the defendant as aforesaid, by the plaintiff, is in words and figures as follows, to-wit:

EXHIBIT "2"

ELECTRICAL RESEARCH PRODUCTS Inc.

Acoustic Department

250 West 57th Street,

New York City, N. Y.

Subsidiary of

Western Electric Company

Incorporated

September 4, 1929.

Mr. W. D. Gross,  
Coliseum Theatre,  
Juneau, Alaska.

Dear Sir:

Referring to our agreement with you dated March 28, 1929, for the installation and use of Western-Electric Sound Equipment in the Coliseum Theatre at Juneau, Alaska—

This agreement was executed with the provisions left blank relating to weekly payments, in order that the amount thereof might be later determined.

It is proposed that this provision of the agreement be now made definite, and that in order to give effect thereto, the above mentioned agreement be modified by striking out paragraph 6 thereof (which, as above stated, was left blank as to the amount of the charge), and inserting in lieu thereof the following:

6. In addition to any other payments required to be made by the Exhibitor hereunder, the Exhibitor agrees to pay Products throughout the term of the license hereby granted a service and inspection payment, payable weekly, which, for the first two weeks of said term shall be payable on the Saturday next succeeding the "Service Day" and thereafter throughout the balance of said term on each and every Saturday in advance. The amount of such payment shall be in accordance with Products' regular schedule of such charges for theatres in Alaska as from time to time established. Under Products' present schedule, the service and inspection payment shall be \$29.75 per week, which charge shall not be exceeded, provided, however, that the Exhibitor agrees to reimburse Products for any extra expense incurred by Products because of the use of airplane or other extraordinary means of transportation incurred in connection with emergency service visits.

Will you kindly indicate your acceptance of the above by signing and returning to us one copy of this letter.

Yours very truly,

R. A. ANDERSON.

Comptroller.

Accepted:

W. D. GROSS.

Exhibitor's Signature Witnessed by:

J. A. GAGE. [20]

(b) That said writing is a mere letter addressed to the defendant by the person whose name is signed to it, and does not constitute a contract between the parties in accordance with the provisions embodied in the contract of March 28, 1929, above referred to, nor was it signed or executed by the parties at all.

(c) That the paper writing above set forth in full, does not constitute a contract between the parties, and is void and unenforceable for the reason that the same is without consideration.

(d) That the signature of the defendant to said paper writing, as it appears above, was obtained by duress, which consisted in this: At the time said signature was obtained, the defendant had not yet fully paid the plaintiff the full amount of Ten Thousand Five Hundred Dollars (\$10,500.00) to be paid it for installing and supplying the defendant with the equipment, and more fully described in the contract of March 28, 1929, but had fully complied with all the terms of said contract on his part and had already paid thereon all that was then due including the sum of \$7,868.75 principal, and the interest thereon. That the plaintiff then and there threatened the defendant that unless he signed the paper writing above last set forth in full, in the manner thereon indicated, the plaintiff would immediately disconnect and remove the equipment supplied by it under the agreement of March 28, 1929, and deprive the defendant of the use thereof, causing him to lose all the monies theretofore paid, and

leave him without equipment to operate his theatre. And the agent and employee of the plaintiff, by whom this threat was communicated to the defendant to-wit: J. A. Gage, told the defendant then and there, that the plaintiff had power to carry out said threat and could and would do so, under his contract of March 28, 1929. That the defendant was not sufficiently learned in the law to know his rights under the contract of March 29, 1929, and believed the statements so made to him by the representative of plaintiff, in relation to such rights. And the defendant further believed that the plaintiff could and would disconnect and remove from his theatre, the equipment placed there under the contract of March 28, 1929, unless he complied with the request that he sign the paper writing, above referred to, in the manner indicated [21] thereon. The defendant had a large sum, to-wit: many thousands, invested in a theatre building, and in the good-will of the business, which said good-will would be entirely destroyed if the equipment supplied him under the contract of March 28, 1929, were disconnected or removed. Especially so, since at that time, no other equipment to take its place, could be procured by the defendant, all of which facts were well known to the plaintiff at the time, as well as to the defendant. That the defendant firmly believed that there was no way for him to save the large amount already paid, or to keep his business from being destroyed, except by complying with the demand of the plaintiff and its agent, that he sign the paper writing

above referred to and so believing, and because of said threats, and not otherwise, the defendant placed his signature upon said writing at the point indicated upon said writing, for the sole purpose of protecting himself and his property against the unlawful threats made by the plaintiff as aforesaid.

#### IV.

That the defendant has been compelled to employ attorneys to defend this case, and avers that One Thousand Dollars (\$1,000.00) is a reasonable attorney's fee for the plaintiff to pay to his said attorneys.

#### SECOND AFFIRMATIVE DEFENSE.

That the defendant further answering said first cause of action set up in the plaintiff's amended complaint, and by way of affirmative defense, alleges:

#### I.

That the plaintiff wholly failed to comply with the provisions of the contract of March 28, 1929, in that it wholly failed to make the regular periodical inspections and render minor adjustment service, as it was required to do by the terms of said contract. That the plaintiff did not make inspection except that on rare occasions, which occurred at irregular intervals, when the plaintiff caused some inexperienced and unqualified youths to call at the defendant's theatre. These [22] representatives of the plaintiff, however, did not inspect the equipment, nor did they make any adjustments except that in

one or two instances, they would do something to the machinery, the defendant does not know exactly what, which rendered the equipment useless, and put it out of commission, so that the defendant's engineers were compelled to put it back into a state of repair. In this connection, the defendant further avers: That the plaintiff never rendered him any regular periodical inspection, nor minor adjustment service. And the defendant further avers: That on several occasions since the installation of the equipment furnished by the plaintiff to the defendant, the equipment became useless as the result of breakdowns occasioned by defects in the machines and otherwise, and that on each and all of such occasions, the defendant notified the plaintiff by wire, asking that a service man be forthwith dispatched to Juneau to repair the equipment; and that on each and every such occasion, the plaintiff either ignored the request of the defendant in this regard, or sent a service man weeks after the breakdown had taken place, so that the defendant was obliged to, and did from the first, hire and keep his own engineers at Juneau, who in every case, made the necessary repairs weeks before the arrival of any service man in the employ of the plaintiff. And in this connection, the defendant further avers: That the plaintiff never sent a service man to Alaska in response to a request for service, by the defendant, or otherwise, in connection with the servicing of defendant's theatre, but made a pretense to comply with such requests by having service men pass through, enroute to the Westward

and Interior of Alaska, to stop off and call at the defendant's theatre while the steamer on which they were traveling, was in port; and that in all cases, said service men arrived weeks after the repairs which they were supposed to make had already been made by the defendant's engineers. In this connection, the defendant avers: That the plaintiff never rendered any service to the defendant in connection with the repair of maintenance of the equipment installed, nor did the plaintiff do anything that had the effect of keeping said equipment in running order, or that had the tendency to accomplish this [23] purpose. And in this connection it is alleged that the word "service", when used in connection with equipment by those engaged in the motion picture industry means the service necessary to keep the equipment in repair at all times.

### III.

That the defendant has been compelled to employ attorneys to defend this case and avers: That One Thousand Dollars (\$1,000.00) is a reasonable attorney's fee for the plaintiff to pay his said attorneys.

### THIRD AFFIRMATIVE DEFENSE.

The Defendant further answering said first cause of action, set up in the plaintiff's amended complaint, by way of affirmative defense alleges:

#### I.

That all of the machinery, appliances, equipment and all of the repair parts referred to in the

amended complaint and contract therein referred to, a copy of which contract is attached hereto marked EXHIBIT "A", which is hereby referred to and made a part hereof, were shipped from some place within the United States proper to the Territory of Alaska, and were articles of Interstate Commerce, and the plaintiff herein was engaged in Interstate Commerce in making and carrying out said contract.

## II.

That the contract referred to in the complaint, a copy of which is attached hereto and marked EXHIBIT "A", is a contract that by its provisions substantially lessens competition and tends to create a monopoly in the Sound Moving Picture business, and is illegal and void under Section 3 of the Clayton Act, (15 U. S. C. A., Sec. 14) and Sec. 1, 2, and 3 of the Sherman Anti-Trust Act, (15 U. S. C. A., Sec. 1, 2, 3.) which contract is void as a whole and especially in the following particulars:

Section 2. \* \* \* The Exhibitor shall not without the written consent of Products, move, alter, change or modify the Equipment, nor add anything thereto, nor take anything therefrom; \* \* \* nor operate, use, or employ the equipment in any manner in conjunction with any sound record not made under license from Products \* \* \* it is agreed that all renewal parts and assembled parts for the Equipments shall be obtained from Products. \* \* \*



Section 4. \* \* \* Products also agrees to make periodical inspection and minor adjustments in the Equipment after it shall have been installed. Products may from time to time install such spare and renewal parts as may in its opinion, be necessary to the satisfactory operation and maintenance of the Equipment.  
\* \* \* [24]

Section 8. \* \* \* The Exhibitor agrees to pay to Products its list installation charges as from time to time established for any additional Equipment or spare or renewal parts, furnished or supplied by Products, upon delivery thereof and to pay the transportation charges thereon. The Exhibitor also agrees upon rendition of invoices to pay for any services rendered and expenses incurred by Products' employees in connection with and for the benefit of the Exhibitor, except for the regular periodical inspection and minor adjustment service hereinbefore provided for. \* \* \*

Section 10. \* \* \* Title to and ownership of all Equipment at any time furnished hereunder and also all tools of all kinds, drawings, prints, and written instructions, remains vested in Products. \* \* \*

Section 12. \* \* \* The Exhibitor will permit Products, through its designated agents, engineers, and mechanics, to have access to the Theatre at all reasonable hours, for the purpose

of installing and from time to time for the purpose of examining and inspecting the Equipment, and will grant to Products, full opportunity to make such adjustments therein and repairs thereto as, in the opinion of Products are necessary or desirable.

Which agreement also contains the following provisions:

Section 14. \* \* \* This agreement and the license hereby granted, shall, at the option of Products, terminate and come to an end upon the happening of any of the following events, hereby designated to be events of default, to-wit:

(B) Upon the failure or refusal of the Exhibitor for any reason to pay any of the items or sums agreed to be paid by it, including the payment of any of the notes provided for in Section 5 hereof, within five days after such item or sum is or may become due, and as to this provision time shall be of the essence.

(D) Upon a breach by the Exhibitor of any of the covenants herein contained relative to the use or maintenance of the Equipment, continued for more than fourteen (14) days after notice thereof by registered mail from Products.

(F) Upon the failure of the Exhibitor to accept delivery of the equipment from the transportation company or common carrier, or to

facilitate the work of Products in installing the equipment.

In the event of a default under any of the provisions of this section at any time during the term of this license, the license hereby granted and all obligations imposed upon Products by virtue of this agreement, shall, at the option of Products and whether or not it terminates this license or removes the Equipment as hereinafter provided, be suspended during the continuance of such default. \* \* \*

Section 15. \* \* \* If this license shall be terminated by default, or if the Exhibitor permits any of the events of default hereinbefore enumerated, to occur, whether or not Products shall exercise the option to terminate this agreement, Products shall thereupon have the right without notice to take immediate possession of said equipment, or any part thereof, and for that purpose may pursue the same wherever it or any part thereof may be found, and may enter, with the aid and assistance of any person or persons, the Theatre or other premises of the Exhibitor and such place or places whatsoever, whether belonging to the Exhibitor or not in which the Equipment or any part thereof may be placed, and may take and seize the same to its own proper use forever, free from any right of the Exhibitor under this agreement. \* \* \* [25]

Section 22. \* \* \* In addition to all other payments herein provided for, the Exhibitor agrees to pay promptly upon receipt of invoice therefore, Products' charges in connection with the installation of said Equipment which arise by reason of such installation being without the States of the United States. \* \* \*

### III.

That Section six (6) set forth in Exhibit "2" filed in this cause, taken in connection with the contract of which it is claimed to be a part, is void in that it tends substantially to lessen competition and tends to create a monopoly in this line of commerce under Section (3) of the Clayton Act, (15 U. S. C. A., Sec. 14) and Sections 1, 2, and 3, of the Sherman Anti-Trust Act, (15 U. S. C. A., Sections 1, 2, and 3).

Which said section six (6) is in words and figures as follows, to wit:

Section 6. \* \* \* In addition to any other payments required by the Exhibitor hereunder, the Exhibitor agrees to pay Products throughout the term of the license hereby granted a service and inspection payment, payable weekly, which, for the first two weeks of said term shall be and thereafter throughout the balance of said term on each and every Saturday in advance. The amount of such payment shall be in accordance with Products' regular schedule of such charges for theatres in Alaska as from time to

time established. Under Products' present schedule, the service and inspection payment shall be \$29.75 per week which charge shall not be exceeded, provided, however, that the Exhibitor agrees to reimburse Products for any extra expense incurred by Products because of the use of airplane or other extraordinary means of transportation incurred in connection with emergency service visits. \* \* \*

That the services contemplated and rendered under Section Six (6) aforesaid, and Section four (4) and Section eight (8) of said contract, hereinbefore set forth, were not services for the benefit of the defendant, or for the purpose of repairing and keeping the machines and equipment in condition, but were for the purpose of supplying the defendant with additional equipment and parts whether or not the same were necessary; and were made in order to prevent the defendant from purchasing and using parts and equipment made by other manufacturers, and were inserted in said contract so that Plaintiffs could, and the Plaintiffs did, under said provisions, substantially lessen competition and prevent the defendant from using other and different parts than those sold or produced by the Plaintiffs, and thus tend to create a monopoly in this line of commerce to-wit: The Sound Motion Picture Business, and the privileges alleged to have been conferred under said [26] sections were intended to be employed and were employed and were employed as means and instru-

ments designed to carry out the illegal purposes of the contract above referred to.

### FIRST COUNTER CLAIM.

Comes now the defendant and files this, his counter claim against the plaintiff, and for cause of action on said counter claim the defendant alleges:

#### I.

That the plaintiff now is, and at all times hereinafter mentioned was, a corporation duly organized and existing under the laws of the State of Delaware, doing business in the Territory of Alaska, under and by virtue of the laws thereof.

#### II.

That the defendant is, and at all times hereafter mentioned was the owner of a motion picture theatre in the City of Juneau, which said theatre is known as the Coliseum Theatre.

#### III.

That for the purpose of equipping said theatre, the defendant did, on the 28th day of March, 1929, enter into a written contract with the plaintiff, a copy of which said contract is attached hereto marked EXHIBIT "A" and is hereby referred to and made a part hereof.

#### IV.

That under the provisions of the contract above referred to, the plaintiff did install, in the defend-

ant's Coliseum Theatre at Juneau, the equipment described in said contract as the equipment which the plaintiff agreed to install in accordance with the terms of said contract. And the defendant complied with said contract in all respects paid to the plaintiff, the full sum of Ten Thousand Five Hundred Dollars (\$10,500.00), as principal, and interest thereon in accordance with provisions of said contract, and in addition thereto, paid the sum of Two Hundred Five Dollars (\$205.00) freight on said equipment and the further sum of Twenty-one dollars (\$21.00) cartage on the same. [27]

## V.

That pursuant to the installation of said equipment, the defendant used the same in connection with the operation of his theatre and did so operate his theatre, and so employ said equipment, that he built up a lucrative business and established a goodwill and reputation for his said theatre, which had a money value of Fifty Thousand Dollars (\$50,000.00).

## VI.

That the plaintiff did, on the 20th day of April, 1931, commence this proceeding in this court, with the view of replevining the equipment installed under the aforesaid contract of March 28, 1929. And the plaintiff did, then and there, replevin said equipment and take the same from the possession of the defendant and deprive the defendant of the

use thereof, and transport said equipment to some point without the Territory of Alaska. Which said proceedings was instituted, maintained, and carried on for the sole purpose of coercing the defendant to pay monies not due and owing by him to the plaintiff, and were instituted, carried on, and maintained in violation of the contract of March 28, 1929.

#### VII.

That because of the removal of the equipment from the defendant's Coliseum Theatre on April 20, 1931, as aforesaid, the defendant was obliged to close down his theatre until new and other equipment could be installed, and the defendant on account of said removal was compelled to keep his said theatre closed from April 20, 1931, to April 21, 1931 both dates inclusive.

#### VIII.

That because of the acts of the plaintiff in so removing the equipment installed under the contract of March 28, 1929, compelling the theatre to be so closed temporarily, and compelling the defendant to procure other equipment, the business of the defendant at his Coliseum Theatre was greatly injured, and the profits therefrom were reduced more than Two Thousand Dollars (\$2,000.00) per month, and the good-will of the business was injured in an amount exceeding Twenty-five Thousand Dollars [28] (\$25,000.00); and the defendant



was compelled, in order to keep his theatre going at all, and prevent a total loss of his entire business and good-will, to pay out the sum of Four Thousand Four Hundred Fifty-six Dollars (\$4,456.00) in order to procure the installation of other equipment, which other equipment was procured by the defendant with as much speed as possible, and was, and is the best obtainable, although less efficient than the equipment removed by the plaintiff, and so inferior thereto as to cause a loss of profits from operations of defendant's said theatre to the extent of Two Thousand Dollars (\$2,000.00), per month as aforesaid, which loss of business due to the use of inferior equipment has continued from April 21, 1931, to May 1, 1933, twenty-one and one-third months.

### IX.

That the rental value of the equipment so wrongfully moved from the defendant's Coliseum Theatre at Juneau, by the plaintiff, for the unexpired term of the lease embodied in the agreement of March 28, 1929, is Nine Thousand Six Hundred Twenty-seven Dollars and three cents (\$9,627.03), Ninety-nine Dollars fifty-nine cents (\$99.59), per month for 96  $\frac{2}{3}$  months with interest thereon from April 20, 1931, and plaintiff replevined additional parts belonging to the defendant in the value of Four Hundred Fifty Dollars (\$450.00). That by reason of the premises, the defendant has been damaged in the above amounts.

## X.

That the defendant has been compelled to employ attorneys to prosecute this case, and avers: That Three Thousand Dollars (\$3,000.00) is a reasonable attorneys' fee for the plaintiff to pay his said attorneys.

## SECOND COUNTER CLAIM.

Comes now the defendant and presents this, his second counter claim to the first cause of action and alleges:

## I.

That the plaintiff now is, and at all times herein-after mentioned was, a corporation duly organized and existing under the [29] laws of the State of Delaware, doing business in the Territory of Alaska, under and by virtue of the laws thereof.

## II.

That the defendant is, and at all times hereafter mentioned, was the owner of a motion picture theatre in the City of Juneau, which said theatre is known as the Coliseum Theatre.

## III.

That for the purpose of equipping said theatre, the defendant did, on the 28th day of March, 1929, enter into a written contract with the plaintiff, a copy of which said contract is attached hereto, marked EXHIBIT "A" and is hereby referred to and made a part hereof.

## IV.

That under the provisions of the contract above set forth, the plaintiff did install, in the defendant's Coliseum Theatre at Juneau, the equipment described in said contract as the equipment which the plaintiff agreed to install in accordance with the terms of said contract. And the defendant paid to the plaintiff, the full sum of Ten Thousand Five Hundred Dollars (\$10,500.00), as the principal, and interest in accordance with provisions of said contract, and in addition thereto, paid the sum of Two Hundred Five Dollars (\$205.00) freight, and Twenty-one (\$21.00) cartage on said equipment.

## V.

That on or about the 30th day of December, 1929, the plaintiff threatened to remove and take from the possession of the defendant, all the equipment heretofore installed by it in the Coliseum Theatre as aforesaid, and deprive the defendant of the use thereof unless the defendant paid the plaintiff the sum of One Thousand Nineteen Dollars (\$1,019.00), which defendant had not contracted to pay, and which was not due plaintiff, for pretended services, which the plaintiff never rendered, and told the defendant, then and there, that it had the power and the authority to carry out its said threats, and would so if said amount were not immediately paid. That at the time said [30] threat was made to the defendant, he had not yet fully paid the Ten Thousand Five Hundred Dollars (\$10,500.00),

due the plaintiff under the contract of March 28, 1929, although all payments due on account thereof had been paid, and the defendant was cognizant of the fact that a removal of said equipment would ruin his business, destroy the good-will he had established, and result in financial losses. The defendant not being sufficiently learned in the law to know his rights under the contract of March 28, 1929, and believing that the plaintiff had the power to carry out its said threats, and would carry out its said threats, then and there paid the plaintiff the sum of One Thousand Nineteen Dollars (\$1,019.00), because of the threats so made by the plaintiff, and under duress as aforesaid. And thereafter the plaintiff continued to threaten the defendant that unless he paid further amounts it would disconnect the equipment, and defendant believing that the plaintiff could and would carry out the threats, paid the plaintiff the following additional amounts: February 10, 1930, \$119.00; April 2, 1930, \$238.00; November 1, 1930, \$208.25; making a total of One Thousand and Five Hundred Eighty-Four Dollars and twenty-five cents (\$1,584.25).

## VI.

That by reason of the premises there is now due and owing, from the plaintiff to the defendant, the sum of One Thousand Five Hundred Eighty-four Dollars and twenty-five cents (\$1,584.25), with interest thereon at 8% per annum from the dates

the payments were made, which said sums have not been paid to the defendant, nor any part thereof.

## VII.

That the defendant has been compelled to employ attorneys to prosecute this case, and avers: That Two Hundred Fifty Dollars (\$250.00), is a reasonable attorneys' fee for the plaintiff to pay his said attorneys.

## ANSWER TO SECOND CAUSE OF ACTION.

Answering the allegations of the second cause of action [31] set forth in the amended complaint, the defendant admits, denies and alleges as follows:

### I.

The defendant admits the allegations contained in paragraph I of said second cause of action.

### II.

Referring to the allegations of paragraph II of the second cause of action set up in the plaintiff's amended complaint, the defendant admits that on or about the 28th day of March, 1929, the plaintiff and defendant entered into a written contract. But the defendant denies that thereafter on or about September 4, 1929, or at any other time or times, or at all, said agreement was modified in writing or otherwise or at all. And the defendant denies that any modified agreement exists between him and the plaintiff. The defendant admits that under the terms of the original contract between him and

the plaintiff, he was given a license to use certain equipment designated as TYPE 2-S equipment for the term of ten years, in the Coliseum Theatre at Ketchikan. But the defendant denies that this license was given under the terms of any modified agreement and he denies that it was held subject to the terms of a modified agreement or in any other manner except under the terms of the original contract executed by the parties on or about the 28th day of March, 1929, a copy of which is attached hereto, marked EXHIBIT "B". And the defendant denies that in accordance with the terms of any modified agreement or any other agreement or at all, he agreed to pay plaintiff for services in making inspections and minor adjustments to said equipment, the sum of \$29.75 per week, or any other sum whatsoever, payable after the first two weeks of the term mentioned or at any other time or in any other manner. The defendant denies that he agreed to pay said sum of \$29.75 per week or any other sum or sums in advance on Saturday of each week or at any other time, or in any other manner. The defendant denies that under the agreement mentioned, or under any other agreement, he agreed to pay the plaintiff the latter's installation [32] charges as from time to time established under the terms of any amended agreement. And the defendant denies that he agreed to pay the plaintiff any transportation charges under the terms of such amended agreement. And the defendant denies that the title to or ownership of said equipment

furnished by plaintiff under any amended agreement or any other agreement, and the title to tools, drawings, prints, or written descriptions or instructions were agreed, under the terms of any amended agreement or any agreement whatsoever, to remain vested in plaintiff. In this connection the defendant denies that there was or is any modified agreement between him and the plaintiff or any other agreement save and except the original contract made between the parties on or about the 28th day of March, 1929, a copy of which is attached hereto, marked EXHIBIT "B", which is hereby referred to and made a part hereof. The defendant denies that the said agreement or license should at plaintiff's option terminate and come to an end upon the refusal of the defendant, for any reason, to pay any of the items or sums set forth in this cause of action as constituting default of the defendant, within five days after such items or sums shall become due, and at any other time. The defendant denies that time was or is to be considered the essence of said agreement relating to the making or refusal to make the payments or payment of the money referred to in this cause of action. And the defendant denies each and every other allegation in said paragraph contained.

### III.

Referring to the allegations of paragraph III of said second cause of action, the defendant admits that the plaintiff installed equipment in his theatre

at Ketchikan, more than two weeks prior to May 24, 1930, but he denies that said equipment has at all times since continued to be installed in said theatre. And the defendant further denies that plaintiff has fully or faithfully, or at all, performed or furnished inspections or minor adjustments to said equipment in said theatre, or elsewhere for the period from May 4, 1930, to and including March 7, 1931, or for or during any other period or at any [33] other time or times, or at all. In this connection the defendant further denies that the plaintiff has furnished him with any inspection or service whatsoever during the period mentioned or at all. And the defendant denies that there is now due the plaintiff from him, the sum of (\$1,219.75), or any other sum or sums whatsoever; denies that said sum mentioned in said paragraph or any other sum or sums became due and owing on May 31, 1930, or at any other time or times; denies that a like sum or any other sum chronologically or otherwise became due the plaintiff from the defendant at the expiration or at the end of each and every successive seven (7) days from May 31, 1930, up to or including March 7, 1931, or at any other time or times, or at all. In this connection the defendant denies that he is indebted to the plaintiff in any sum or sums whatsoever, either on account of the matters of things referred to in paragraph III or at all, denies that he has defaulted; and further denies that he now continues in default for want of payments in said paragraph mentioned;



denies that more than five (5) days have elapsed since any of the therein mentioned weekly sum of \$29.75 became due and payable under said agreement; denies that any sum became or is due; denies that said agreement was modified; denies that the sum of \$29.75 or any other sum, became due and owing at the respective dates shown on EXHIBIT "B", or at any other time; denies that more than five (5) days have elapsed since any of the sum became due and payable under said agreement, denies that said agreement was modified.

#### IV.

For answer to paragraph IV of the second cause of action set forth in the amended complaint herein, the defendant denies that the actual value of said equipment is any sum less than \$10,077.00.

#### V.

For answer to paragraph V of the second cause of action set up in the amended complaint herein, the defendant admits that the plaintiff is the owner of said equipment, but denies that the plaintiff is lawfully entitled to the possession thereof by reason [34] of the ownership thereof, or by reason of the provisions of said agreement; denies that said property is unlawfully detained by the defendant; denies that the defendant refuses to perform and carry out the terms of his agreement, but denies that the agreement EXHIBIT "B" attached hereto, has been modified. Defendant admits the said property has not been taken for a tax, assessment

or fine pursuant to a statute, or seized under an execution and attachment against the property of the plaintiff.

#### VI.

For answer to paragraph VI of the second cause of action set up in the amended complaint, the defendant denies that the rental value of equipment is any sum less than (\$1,250.00) per year; denies that the rental value for a part of a year is equal to a whole year or any sum greater than the percentage the part of the year bears to the whole year. The defendant denies that the plaintiff has been damaged by the defendant's detention of said property, in the sum of \$1,050.00 or any other sum; and denies that the plaintiff will continue to be damaged at said rate during each successive year or fraction thereof at said rate, or any other rate for each said year and fraction of the year, or any other time.

#### VII.

For answer to paragraph VII of the second cause of action set up in the amended complaint, the defendant denies the allegations therein contained.

#### VIII.

For answer to paragraph VIII of the second cause of action set up in the amended complaint herein, the defendant admits that the plaintiff made a demand upon the defendant for the return of the property therein mentioned; admits that he has refused to return said property; and admits that he had not returned said property or any part

thereof at the time this cause of action was begun, nor at any other time, except as hereinafter stated.

FOURTH AFFIRMATIVE DEFENSE. [35]

The defendant further answering the second cause of action set up in the amended complaint of the plaintiff herein and by way of affirmative defense, alleges:

I.

That under date of the 28th of March, 1929, the plaintiff and the defendant entered into a contract, a copy of which is attached hereto marked EXHIBIT "B" which is hereby referred to and made a part hereof.

II.

That the agreement referred to in paragraph I hereof, is still in full force and effect and has never been modified, rescinded, or revoked.

III.

Referring to the allegations of paragraph II of the second cause of action embodied in plaintiff's amended complaint where it is alleged that after the agreement of March 28, 1929, had been executed, and on or about September 4, 1929, the agreement of March 28, 1929 was mutually modified, and referring also to the paper writing filed by the plaintiff and marked EXHIBIT "4" which was served upon the defendant by the plaintiff in response to a request for a copy of the agreement, alleged to have been executed on or about September 4, 1929,

by which the previous agreement of March 28, 1929, is alleged to have been mutually modified, the defendant avers as follows:

a) that the paper writing so served upon the defendant as aforesaid, by the plaintiff, is in words and figures as follows, to wit:

EXHIBIT "4"

ELECTRICAL RESEARCH  
PRODUCTS, INC.  
ACOUSTIC DEPARTMENT.  
250 West 57th Street,  
New York, N. Y.  
Subsidiary of  
WESTERN ELECTRIC CO.,  
Incorporated

September 4, 1929. [36]

Mr. W. D. Gross,  
Coliseum Theatre,  
Ketchikan, Alaska.

Dear Sir:

Referring to our agreement with you dated March 28, 1929, for the installation and use of Western Electric Sound Equipment in the Coliseum Theatre at Ketchikan, Alaska.

This agreement was executed with the provision left blank relating to weekly service payments, in order that the amount thereof might be later determined.

It is proposed that this provision of the agreement be now made definite, and that in order to give effect thereto, the above mentioned agree-

ment be modified by striking out paragraph 6 thereof (which as above stated, was left blank as to the amount of the charge) and inserting in lieu thereof the following:

6) IN addition to any other payments required to be made by the Exhibitor hereunder, the Exhibitor agrees to pay Products throughout the term of the license hereby granted a service and inspection payment, payable weekly, which, for the first two weeks of said term shall be payable on the Saturday next succeeding the "Service Day" and every Saturday in advance. The amount of such payment shall be in accordance with Products' regular schedule of such charges for theatres in Alaska as from time to time established. Under Products' present schedule, the service charge shall not be exceeded, provided however, that the Exhibitor agrees to reimburse Products for any extra expense incurred by Products because of the use of airplane or other extraordinary means of transportation incurred in connection with emergency service visits.

Will you kindly indicate your acceptance of the above by signing and returning to us one copy of this letter.

Yours very truly,

R. E. ANDERSON,

Comptroller.

ACCEPTED:

W. D. GROSS

Exhibitor's Signature witnessed by:

J. A. GAGE.

b) That said writing is a mere letter addressed to the defendant by the person whose name is signed to it, and does not constitute a contract between the parties hereto, in that it is not executed by the parties in accordance with the provisions embodied in the contract of March 28, 1929, above referred to, nor was it signed or executed by the parties at all.

c) That the paper writing above set forth in full, does not constitute a contract between the parties, and is void and unenforceable for the reason that the same is without consideration.

d) That the signature of the defendant to said paper writing, as it appears above, was obtained by duress, which [37] consisted in this: At the time said signature was obtained, the defendant had not yet fully paid the plaintiff the full amount of Ten Thousand Five Hundred Dollars (\$10,500.00) to be paid it for installing and supplying the defendant with the equipment, and more fully described in the contract of March 28, 1929, but had fully complied with all the terms of said contract on his part and had already paid thereon all that was then due including the sum of Seven Thousand Three Hundred Forty-two Dollars and fifty cents (\$7,342.50), principal and the interest thereon. That the plaintiff then and there threatened the defendant that unless he signed the paper writing above last set forth in full, in the manner thereon indicated, the plaintiff would immediately disconnect and remove the equipment supplied by it under the

agreement of March 28, 1929, and deprive the defendant of the use thereof, causing him to lose all the monies theretofore paid, and leave him without equipment to operate his theatre. And the agent and employee of the plaintiff, by whom this threat was communicated to the defendant, to wit: J. A. GAGE, told the defendant, then and there, that the plaintiff had power to carry out said threat and could and would do so, under his contract of March 28, 1929. That the defendant was not sufficiently learned in the law to know his rights under the contract of March 28, 1929, and believed the statements so made to him by the representative of plaintiff, in relation to such rights. And the defendant further believed that the plaintiff could and would disconnect and remove from his theatre, the equipment placed there under the contract of March 28, 1929, unless he complied with the request that he sign the paper writing, above referred to, in the manner indicated thereon. That the defendant had a large sum, to wit: many thousand, invested in a theatre building, and in the good will of the business, which said good will would be entirely destroyed if the equipment supplied him under the contract of March 28, 1929, were disconnected or removed. Especially so, since at that time, no other equipment to take its place, could be procured by the defendant, all of which facts were well known to the plaintiff at the time, as well as to the defendant. That the defendant [38] firmly believed that there was no way for him to save

the large sum already paid, or to keep his business from being destroyed, except by complying with the demand of the plaintiff and its agent, that he sign the paper writing above referred to. And so believing, and because of said threats, and not otherwise, the defendant placed his signature upon said writing at the point indicated upon said writing, for the sole purpose of protecting himself and his property against the unlawful threats made by the plaintiff as aforesaid.

#### IV.

That the defendant has been compelled to employ attorneys to defend this case, and avers: That One Thousand Dollars (\$1,000.00) is a reasonable attorneys' fee for the plaintiff to pay his said attorneys.

#### FIFTH AFFIRMATIVE DEFENSE.

The defendant further answering said second cause of action set up in the plaintiff's amended complaint, and by way of affirmative defense, alleges:

#### I.

That the plaintiff wholly failed to comply with the provisions of the contract of March 28, 1929, in that it wholly failed to make the regular periodical inspections and render minor adjustment service, as it was required to do by the terms of said contract. That the plaintiff did not make inspection except that on rare occasions, which occurred at irregular intervals, when the plaintiff



caused some inexperienced and unqualified youths to call at the defendant's theatre. These representatives of the plaintiff, however, did not inspect the equipment, nor did they make any adjustments except to the machinery, the defendant does not know exactly what, which rendered the equipment useless, and put it out of commission, so that the defendant's engineers were compelled to put it back into a state of repair. In this connection, the defendant avers: [39] That the plaintiff never rendered him any regular periodical inspection, nor minor adjustment service. And the defendant avers: That on several occasions since the installation of the equipment furnished by the plaintiff to the defendant the equipment became useless as the result of breakdowns occasioned by defects in the machines and otherwise, and that on each and all of such occasions, the defendant notified the plaintiff by wire, asking that a service man be forthwith dispatched to Juneau to repair the equipment; and that on each and every such occasion, the plaintiff either ignored the request of the defendant in this regard, or sent a service man weeks after the breakdowns had taken place, so that the defendant was obliged to, and did, from the first, hire and keep his own engineers at Ketchikan, who, in every case, made the necessary repairs weeks before the arrival of any service man in the employ of the plaintiff. And in this connection, the defendant further avers: That the plaintiff never sent a service man to Alaska in response to a request for

service, by the defendant, or otherwise, in connection with the servicing of defendant's theatre, but made a pretense to comply with such requests by having service men pass through enroute to the westward and interior of Alaska, to stop off and call at the defendant's theatre while the steamer, on which they were travelling, was in port; and that in all cases, said service men arrived weeks after the repairs which they were supposed to make, had already been made by the defendant's engineers. In this connection, the defendant avers: That the plaintiff never rendered any service to the defendant in connection with the repair or maintenance of the equipment installed, nor did the plaintiff do anything that had the effect or keeping said equipment in running order, or that had the tendency to accomplish this purpose. And in this connection it is alleged that the word "service" when used in connection with equipment by those engaged in the motion picture industry means the service necessary to keep the equipment in repair at all times. [40]

## II.

That the defendant has been compelled to employ attorneys to defend this case, and avers: That One Thousand Dollars (\$1,000.00), is a reasonable attorneys' fee for the plaintiff to pay his said attorneys.

## SIXTH AFFIRMATIVE DEFENSE.

The defendant further answering said second cause of action, set up in the plaintiff's amended complaint, by way of affirmative defense, alleges:

## I.

That all of the machinery, appliances, equipment, and all of the repair parts referred to in the amended complaint and contract therein referred to, a copy of which contract is hereby attached, marked EXHIBIT "B", which is hereby referred to and made a part hereof, were shipped from some place within the United States proper to the Territory of Alaska, and were articles of Interstate Commerce and the plaintiff herein was engaged in Interstate Commerce in making and carrying out said contract.

## II.

That the contract referred to in the complaint, a copy of which is attached hereto, marked EXHIBIT "B", is a contract that tends to create a monopoly in the Sound Moving Picture business, and is illegal and void under Section (3) of the Clayton Act, (15 USCA Sec. 14) and Sections 1 and 2 of the Sherman Anti-Trust Act, (15 USCA Sec. 1 and 2 and 3) which contract is void as a whole and especially in the following particulars:

Section 2. \* \* \* The Exhibitor shall not without the written consent of Products, move, alter, change or modify the Equipment, nor add anything thereto, nor take anything therefrom;

\* \* \* nor operate, use or employ the Equipment in any manner in conjunction with any sound record not made under license from Products \* \* \* it is agreed that all renewal parts and assembled parts for the Equipment shall be obtained from Products. \* \* \*

Section 4. \* \* \* Products also agrees to make periodical inspection and minor adjustments in the Equipment after it shall have been installed. Products may from time to time install such spare and renewal parts as may in its opinion be necessary to the satisfactory operation and maintenance of the Equipment. \* \* \* [41]

Section 8. \* \* \* The Exhibitor agrees to pay to Products its list installation charges as from time to time established for any additional Equipment or spare or renewal parts, furnished or supplied by Products, upon delivery thereof, and to pay the transportation charges thereon. The Exhibitor also agrees upon rendition of invoices to pay for the services rendered and expenses incurred by Products' employees in connection with and for the benefit of the Exhibitor for the regular periodical inspection and minor adjustment service hereinbefore provided for.

Section 10. \* \* \* Title to and ownership of all Equipment at any time furnished hereunder and also all tools of all kinds, drawings,

prints and written instructions, remains vested in Products. \* \* \*

Section 12. \* \* \* The Exhibitor will permit Products, through its designated agents, engineers and mechanics, to have access to the Theatre at all reasonable hours, for the purpose of installing, and from time to time for the purpose of examining, and inspecting the Equipment, and will grant to Products full opportunity to make such adjustments therein and repairs thereto as, in the opinion of Products are necessary or desirable. \* \* \*

Which agreement also contains the following provisions:

Section 14. \* \* \* This agreement and the license hereby granted, shall, at the option of Products, terminate and come to an end upon the happening of any of the following events, hereby designated to be events of default, to wit:

b) Upon the failure or refusal of the Exhibitor for any reason to pay any of the items or sums agreed to be paid by it, including the payment of any of the notes provided for in Section (5) hereof, within five days after such item or sum is or may become due, and as to this provision time shall be of the essence.

d) Upon a breach by the Exhibitor of any of the covenants herein contained relative to the use or maintenance of the Equipment, continued for more than fourteen (14) days after

notice thereof by registered mail from Products.

f) Upon the failure of the Exhibitor to accept delivery of the Equipment from the transportation company or common carrier, or to facilitate the work of Products in installing the Equipment.

In the event of a default under any of the provisions of this section at any time during the term of this license, the license hereby granted and all obligations imposed upon Products, by virtue of this agreement, shall, at the option of Products, and whether or not it terminates this license or removes the Equipment as hereinbefore provided, be suspended during the continuance of such default.

Section 15. \* \* \* If this license shall be terminated by default, or if the Exhibitor permits any of the events of default, hereinbefore enumerated, to occur, whether or not Products shall exercise the option to terminate this agreement. Products shall thereupon have the right without notice to take immediate possession of said Equipment, or any part thereof, and for that purpose may pursue the same wherever it or any part thereof may be found and may enter, with the aid and assistance of any person or persons, the Theatre or other premises of the Exhibitor and such place or places whatsoever, whether belonging to the Exhibitor or not in which the equipment or any part thereof

may be placed, and may take and seize the same to its own proper use forever, free from any right of the Exhibitor under this agreement. \* \* \* [42]

Section 22. \* \* \* In addition to all other payments herein provided for, the Exhibitor agrees to pay promptly upon receipt of invoice therefor, Products' charges in connection with the installation of said Equipment which arise by reason of such installations being without the States of the United States. \* \* \*

III.

That Section six (6) set forth in EXHIBIT "4", filed in this cause, taken in connection with the contract of which it is claimed to be a part, is void in that it tends substantially to lessen competition and tends to create a monopoly in this line of commerce under Section (3) of the Clayton Act, (15 USCA. Sec. 14) and Sections 1, 2, and 3, of the Sherman Anti-Trust Act, (15 USCA Sec. 1, 2, and 3.

Which said section six (6) is in words and figures as follows, to-wit:

Section 6. \* \* \* In addition to any other payments required by the Exhibitor hereunder, the Exhibitor agrees to pay Products throughout the term of the license hereby granted a service and inspection payment, payable weekly which, for the first two weeks of said term shall be and thereafter throughout the balance of

said term on each and every Saturday in advance. The amount of such payment shall be in accordance with Products' regular schedule of such charges for theatres in Alaska as from time to time established. Under Products' present schedule, the service and inspection payment shall be \$29.75 per week, which charge shall not be exceeded, provided, however, that the Exhibitor agrees to reimburse Products for any extra expense incurred by Products because of the use of airplane or other extraordinary means of transportation incurred in connection with emergency service visits. \* \* \*

That the services contemplated and rendered under Section six (6) aforesaid, and Section four (4) and Section eight (8) of said contract hereinbefore set forth, were not services for the benefit of the defendant, or for the purpose of repairing and keeping the machines and equipment in condition, but were for the purpose of supplying the defendant with additional Equipment and parts whether or not the same were necessary; and were made in order to prevent the defendant from purchasing and using parts and Equipment made by other manufacturers, and were inserted in said contract so that plaintiffs could, and the plaintiffs did, under said provisions, substantially lessen competition and prevent the defendant from using other and different parts than those parts sold of produced by the plaintiffs, and thus tend to create a



monopoly in this line of [43] Commerce, to wit: The Sound Motion Picture business, and the privileges alleged to have been conferred under said Sections were intended to be employed as means and instruments designed to carry out this illegal purpose of the contract above referred to.

### THIRD COUNTER CLAIM.

Comes now the defendant and files this, his third counter claim against the plaintiff, and for cause of action on said counter claim the defendant alleges:

#### I.

That the plaintiff now is, and at all times hereinafter mentioned was a corporation duly organized and existing under the laws of the State of Delaware, doing business in the Territory of Alaska, under and by virtue of the laws thereof.

#### II.

That the defendant is, and at all times hereafter mentioned, was the owner of a motion picture theatre in the City of Ketchikan, which said theatre is known as the Coliseum Theatre.

#### III.

That for the purpose of equipping said Theatre, the defendant did, on the 28th day of March, 1929, enter into a written contract with the plaintiff, a copy of which said contract is attached hereto, marked EXHIBIT "B" and is hereby referred to and made a part hereof.

## IV.

That under the provisions of the contract above referred to, the plaintiff did install, in the defendant's Coliseum Theatre at Ketchikan, the equipment described in said contract as the equipment which the plaintiff agreed to install in accordance with the terms of said contract. And the defendant paid to the plaintiff, the full sum of Ten Thousand Five Hundred Dollars (\$10,500.00), as principal, and interest thereon, in accordance with provisions of said contract, and in addition, thereto, paid the sum of One Hundred and Eighty-four Dollars and eighty-three cents (\$184.83), freight on said Equipment, and the further sum of Twenty-one Dollars (\$21.00) cartage on the same and complied with [44] said contract in all respects.

## V.

That pursuant to the installation of said equipment, the defendant used the same in connection with the operation of his theatre, and did so operate his theatre, and so employ said equipment, that he built up a lucrative business and established a good will and reputation for his said theatre, which had a money value of Fifty Thousand Dollars (\$50,000.00).

## VI.

That the plaintiff did, on the 20th day of April, 1931, commence the proceeding in this court, with the view of replevining the equipment installed under the aforesaid contract of March 28, 1929, EXHIBIT "B". And the plaintiff did, then and

there, replevin said equipment and take the same from the possession of the defendant and deprive the defendant of the use thereof, and transport said equipment to some point without the Territory of Alaska. Which said proceeding was instituted, maintained, and carried on for the sole purpose of coercing the defendant to pay monies not due and owing by him to the plaintiff, and were instituted, carried on, and maintained in violation of the contract of March 28, 1929.

#### VII.

That because of the removal of the equipment from the defendant's Coliseum Theatre on April 28th, 1931, as aforesaid, the defendant was obliged to close down his theatre until new and other equipment could be installed, and defendant on account of said removal was compelled to keep his said Theatre closed on April 28th, 1931.

#### VIII.

That because of the acts of the plaintiff in so removing the equipment installed under the contract of March 29, 1929, compelling the theatre to be closed temporarily, and compelling the defendant to procure other equipment, the business of the defendant at his Coliseum Theatre at Ketchikan, was greatly injured, and the profits therefrom were reduced more than Two [45] Thousand Dollars (\$2,000.00), per month, and the good will of the business was injured in an amount exceeding Twen-

ty-five Thousand Dollars (\$25,000.00); and the defendant was compelled, in order to keep his theatre going at all, and prevent a total loss of his entire business and good will, to pay out the sum of Four Thousand Four Hundred and Fifty-six Dollars (\$4,456.00), in order to procure the installation of other equipment, which other equipment was procured by the defendant, with as much speed as possible, and was, and is the best obtainable, although less efficient than the equipment removed by the plaintiff, and so inferior thereto as to cause a loss of profits from operations of defendant's said theatre to the extent of Two Thousand Dollars (\$2,000.00) per month, as aforesaid, which monthly loss has continued from the removal of the equipment above referred to, to May 1, 1933, 24 months and 2 days.

### IX.

That the rental value of the equipment so wrongfully removed from the defendant's Coliseum Theatre at Ketchikan by the plaintiff, for the unexpired term of the lease embodied in the agreement of March 28, 1929, is Nine Thousand Six Hundred Forty-eight Dollars sixty-five cents (\$9,648.65), Ninety-nine Dollars and thirteen cents (\$99.13) per month for 97  $\frac{1}{3}$  months with interest thereon from April 28, 1929, 1931, and the plaintiff replevined additional parts belonging to the defendant, of the value of Four Hundred Fifty Dollars (\$450.00). That by reason of the premises, the defendant has been damaged in the above amounts.

#### FOURTH COUNTER CLAIM.

And now comes the defendant and presents this, his fourth counter claim herein, and for his fourth counter claim alleges:

##### I.

That the plaintiff now is, and at all times hereinafter mentioned was a corporation duly organized and existing under the laws of the State of Delaware, doing business in the [46] Territory of Alaska, under and by virtue of the laws thereof.

##### II.

That the defendant is, and at all times hereafter mentioned, was the owner of a motoin picture theatre in the City of Ketchikan, which said theatre is known as the Coliseum Theatre.

##### III.

That for the purpose of equipping said theatre, the defendant did, on the 28th day of March, 1929, enter into a written contract with the plaintiff, a copy of which said contract is attached hereto, marked EXHIBIT "B" and is hereby referred to and made a part hereof.

##### IV.

That under the provisions of the contract above set forth, the plaintiff did install, in the defendant's Coliseum Theatre at Ketchikan, the equipment described in said contract as the equipment which the plaintiff agreed to install in accordance

with the terms of said contract. And the defendant paid to the plaintiff, the full sum of Ten Thousand Five Hundred Dollars (\$10,500.00), as principal, and interest in accordance with provisions of said contract and in addition thereto, paid the sum of One Hundred Eighty-four Dollars eighty-three cents (\$184.83), freight, and Twenty-one Dollars (\$21.00), cartage on said equipment.

#### V.

That on or about the 30th day of December, 1929, the plaintiff threatened to remove and take from the possession of the defendant, all the equipment heretofore installed by it in the Coliseum Theatre, as aforesaid, and deprive the defendant of the use thereof unless the defendant paid the plaintiff the sum of Nine Hundred Fifty-seven Dollars and sixty cents (\$957.60), which defendant had not contracted to pay, and which was not due plaintiff for pretended services, which the plaintiff never rendered, and told the defendant then and there that it had the power and authority to carry out its said threats, and would do [47] so if said amount were not immediately paid. That at the time said threat was made to the defendant he had not yet fully paid the Ten Thousand Five Hundred Dollars (\$10,500.00), due the plaintiff under the contract of March 28, 1929, although all payments due on account thereof had been paid, and the defendant was cognizant of the fact that a removal of said equipment would ruin his business, destroy the good will he had

established, and result in financial losses. The defendant not being sufficiently learned in the law to know his rights under the contract of March 28, 1929, and believing that the plaintiff had the power to carry out its said threats, and would carry out its said threats, then and there paid the plaintiff the sum of Nine Hundred Fifty-seven Dollars and sixty cents (\$957.60) because of the threats so made by the plaintiff, and under duress, as aforesaid. And thereafter the plaintiff, continued to threaten the defendant that unless he paid further amounts it would disconnect the equipment, and the defendant believing that the plaintiff could and would carry out its threats paid the plaintiff the following amounts: February 10, 1930 \$119.00; April 2, 1930, \$238.00; November 1, 1930, \$208.25; making a total of \$1,525.85.

## VI.

That by reason of the premises there is now due and owing from the plaintiff to the defendant, the sum of One Thousand Four Hundred Sixty Dollars and ninety-three cents (\$1,460.93); with interest thereon at 8% per annum from the dates the payments were made, which said sums have not been paid to the defendant, nor any part thereof.

## VII.

That the defendant has been compelled to employ attorneys to prosecute this case and avers: That Two Hundred Fifty Dollars (\$250.00), is a reason-

able attorneys' fee for the plaintiff to pay his said attorneys.

WHEREFORE, the defendant prays judgment against the plaintiff as follows: [48]

I.

That plaintiff's first cause of action be dismissed, and that the defendant have judgment for One Thousand Dollars (\$1,000.00), attorneys' fee.

II.

That the defendant have judgment on his first counter claim, for the return of the property taken from the defendant by virtue of the writ, being the equipment furnished the defendant under contract EXHIBIT "A", including extra parts; (\$9,627.03) for prepaid rent together with interest thereon from April 20, 1931, at 8% per annum; (\$48,666.66) for loss of profits; (\$25,000.00) for injury to the good will; and (\$3,000.00) attorneys' fee; and in case the return of said property cannot be had for the value thereof; prepaid rent (\$9,626.03); extra parts (\$450.00) with interest on (\$10,077.67) from April 20, 1931 at 8%; (\$48,666.66) loss of profits; (\$25,000.00) loss to the good will and (\$3,000.00) attorneys' fee; four thousand four hundred fifty-one (\$4451.00) Dollars expenses incurred in connection with the purchase of new equipment to save the business from utter loss as alleged herein.



## III.

That the defendant have judgment against the plaintiff on his second counter claim, in the sum of One Thousand Five Hundred Twenty-four Dollars twenty-five cents (\$1,524.25) with interest from November 1, 1930 at 8%; and Two Hundred Fifty Dollars (\$250.00) attorneys' fee.

## IV.

That plaintiff's second cause of action be dismissed, and that the defendant have judgment for One Thousand Dollars (\$1,000.00) attorneys' fee.

## V.

That the defendant have judgment on his third counter claim for the return of the property taken from the defendant by virtue of the writ of replevin herein referred to, being the equipment furnished the defendant under contract EXHIBIT "B" [49] including extra parts: (\$9,648.65), for prepaid rent together with interest thereon at 8% per annum from April 28, 1931; (\$48,133.30), damages for loss of profits; (\$25,000.00) loss of good will; and (\$3,000.00) attorneys' fee; or in case return of said property cannot be had, judgment for the value thereof, towit: (\$9,648.65), for prepaid rent, (\$450.00) for extra parts with interest on (\$10,098.65) from April 28, 1931, at 8% per annum; (\$48,133.33) loss of profits; (\$25,000.00), loss of good will and (\$3,000.00) attorneys' fee; four thousand four hundred fifty one (\$4,451.00) Dollars, expenses

incurred in connection with the purchase of new equipment to save the business from utter loss as alleged herein.

That defendant have judgment against the plaintiff on his fourth counter claim in the sum of One Thousand Five Hundred Twenty-five Dollars and eight-five cents (\$1,525.85) with interest thereon at 8% from November 1, 1930.

### VII.

That the defendant have judgment against the plaintiff for his costs and disbursements herein incurred.

HELLENTHAL & HELLENTHAL

Address: 3rd Floor, over First  
National Bank, Juneau, Alaska.

H. L. FAULKNER

Address: First Nat'l Bank Bldg.,  
Second Floor, Juneau, Alaska.[50]

United States of America  
Territory of Alaska—ss.

W. D. GROSS, being first duly sworn on oath deposes and says: That he has heard the foregoing answer read and knows the contents thereof; and that the same is true as he verily believes:

W. D. GROSS

Subscribed and sworn to before me this 27 day of March, 1934.

[Seal]

SIMON HELLENTHAL

Notary Public for Alaska. My commission expires 2/4/38.

Copy of the foregoing answer received this 27  
day of March, 1934.

R. E. ROBERTSON  
Attorney for the Plaintiff.

[Endorsed]: Filed Mar. 28, 1934. [51]

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[Title of Court and Cause.]

DEMURRER TO AMENDED ANSWER.

Comes now the plaintiff herein and demurs to defendant's amended answer herein as amended, as follows, to-wit:

1. Plaintiff demurs to the First, Second, Third, Fourth, Fifth and Sixth Affirmative Defenses, and to each of them, contained in said amended answer, on the ground that upon the face thereof neither of them constitute a defense because neither of them state facts sufficient to constitute a defense to plaintiff's amended complaint herein.

2. Plaintiff demurs to the First, Second, Third and Fourth Counterclaims, and to each or them, contained in said amended answer, upon the ground that neither of them constitute a counterclaim because neither of them state facts sufficient to constitute a counterclaim to plaintiff's amended complaint herein, and because there is another action pending between the same parties for the same cause, namely, each of said counterclaims are asserted and relied upon by defendant in that certain suit now pending in this court, numbered and titled

upon the records and dockets of this court, "No. 3158-A, Electrical Research Products, Inc., Plaintiff, vs. W. D. Gross, Defendant," wherein the first counterclaim in defendant's amended answer therein is the same as the First Counterclaim in defendant's amended answer herein, and wherein the Second Counterclaim in defendant's amended answer therein is the same as the Second Counterclaim in defendant's amended answer herein, and wherein the Third Counterclaim in defendant's amended answer therein is the same as the Third Counterclaim in defendant's amended answer herein, and wherein the Fourth Counterclaim in defendant's amended answer therein is the same as the Fourth Counterclaim in defendant's amended answer herein. [52]

Respectfully Submitted,

HENRY RODEN

R. E. ROBERTSON

Attorneys for Plaintiff.

Copy received January 18, 1935.

J. A. HELLENTHAL

Attorney for Defendant.

[Endorsed]: Filed Jan. 19, 1935. [53]

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[Title of Court and Cause.]

ORDER.

Now on this day plaintiff's demand for a Bill of Particulars for defendant's specification of vari-

ous items mentioned or referred to in his Amended Answer herein as amended, and plaintiff's motion against defendant's Amended Answer herein as amended, and plaintiff's demurrer to defendant's Amended Answer herein as amended, each coming regularly on for hearing, and the Court being now fully advised in the premises, it is hereby ordered that said demand for a Bill of Particulars be and it is hereby disallowed, to which plaintiff excepts and its exception is allowed, and that plaintiff's said motion be and it is hereby overruled, to which plaintiff excepts and its exception is hereby allowed, and that plaintiff's said demurrer be and it is hereby denied, to which plaintiff excepts and its exception is hereby allowed.

Done in open court this 19th day of January, 1935.

GEO. F. ALEXANDER

District Judge.

[Endorsed]: Filed Jan. 19, 1935. [54]

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[Title of Court and Cause.]

REPLY TO AMENDED ANSWER  
AS AMENDED.

Comes now the plaintiff and for reply to defendant's Amended Answer herein contained, as amended, admits, denies and alleges, namely:

Replying to defendant's First Affirmative Defense to the First Cause of Action contained in

plaintiff's Amended Complaint herein, plaintiff admits, denies and alleges, namely:

I.

Plaintiff admits the allegations contained in Paragraph I thereof.

II.

Plaintiff denies each and every allegation contained in Paragraph II of said First Affirmative Defense, and plaintiff alleges that that certain contract made and entered into by the parties hereto on March 28, 1929, a substantial copy whereof, marked Exhibit A, is attached to defendant's said Amended Answer, was, after its execution, mutually modified by that certain subsequent agreement made and entered into by the parties hereto under date of September 4, 1929, a substantial copy whereof is set in Paragraph III of said First Affirmative Defense.

III.

Plaintiff admits that the document, designated as Exhibit 2, set forth in Paragraph III of said First Affirmative Defense, is a substantial copy of that certain agreement made and entered into by and between the parties hereto under date of September 4, 1929, and alleges that the aforesaid agreement of March 28, 1929, was mutually modified by the parties hereto by said subsequent agreement, Exhibit 2, of September 4, 1929; plaintiff denies each and every allegation of Sections b and c, contained in said Paragraph III, plaintiff denies each

and every allegation of [55] Section d, contained in said Paragraph III, and plaintiff denies that defendant, at the time defendant executed said agreement of September 4, 1929, had fully paid plaintiff the sums theretofore becoming or then due plaintiff under either said contract of March 28, 1929, or under that contract as modified by said contract dated September 4, 1929, and plaintiff denies each and every other allegation in said Paragraph III contained.

#### IV.

Plaintiff denies each and every allegation contained in Paragraph IV of said First Affirmative Defense.

Replying to defendant's second Affirmative Defense to the First Cause of Action, contained in plaintiff's Amended Complaint herein, plaintiff admits, denies and alleges, namely:

#### I.

Plaintiff not only denies that it failed to make the periodical inspections and render the minor adjustment services as agreed by it in that certain contract of March 28, 1929, a copy whereof is attached to defendant's said Amended Answer, marked Exhibit 1, as modified by that certain agreement bearing date of September 4, 1929, a copy whereof, marked Exhibit 2, is set forth in defendant's said Amended Answer, but also denies that said contracts or either of them required plaintiff

to make regular periodical inspections or to render regular periodical minor adjustment services, and plaintiff denies that the word "service" when used in connection with equipment, by those engaged in the motion picture industry, means the service necessary to keep the equipment in repair at all times, and plaintiff further denies each and every other allegation contained in defendant's said Second Affirmative Defense to the First Cause of Action contained in plaintiff's Amended Complaint herein.

Replying to defendant's Third Affirmative Defense to the First Cause of Action contained in plaintiff's Amended Complaint herein, plaintiff admits, denies and alleges, namely:

#### I.

Plaintiff admits that the machinery, appliances, equipment and repair parts, mentioned in plaintiff's Amended [56] Complaint herein and in that certain contract of March 28, 1929, a substantial copy whereof, marked Exhibit A, is attached to defendant's said Amended Answer, were shipped from a point within the United States to the Territory of Alaska, and denies each and every other allegation in said Paragraph I contained.

#### II.

Plaintiff denies each and every allegation contained in Paragraphs II and III of said Third Affirmative Defense.



Replying to defendant's First Counterclaim contained in his said Amended Answer, plaintiff admits, denies and alleges, namely:

I.

Plaintiff admits Paragraph I thereof.

II.

Plaintiff admits Paragraph II thereof.

III.

Plaintiff, in replying to Paragraph III thereof, admits that on March 28, 1929, the parties hereto entered into that certain written contract, a substantial copy whereof is attached to said Amended Answer and marked Exhibit A, but alleges that said contract was made subject to the agreement that the weekly charge to be made by plaintiff for the periodical services therein mentioned and to be paid therefor by defendant to plaintiff had not been but should be later established by mutual agreement, which mutual agreement was thereafter made between the parties hereto and reduced to writing in that certain agreement bearing date September 4, 1929, a substantial copy whereof, marked Exhibit 2, is set forth in defendant's said Amended Answer.

IV.

Plaintiff denies each and every allegation contained in Paragraph IV thereof, except it admits that in accordance with said contract of March 28, 1929, which was subsequently modified by the par-

ties hereto by that certain contract of September 4, 1929, a substantial copy whereof is set forth in said Amended Answer, plaintiff duly installed said equipment in defendant's said theatre. [57]

#### V.

Plaintiff admits that, after the installation of said equipment, defendant used said equipment in the operation of his Coliseum Theatre in Juneau, Alaska, but plaintiff denies each and every other allegation in said Paragraph V contained.

#### VI.

Plaintiff denies each and every allegation contained in Paragraph VI thereof, except plaintiff admits that it instituted this suit on or about April 20, 1931, in this court and that thereafter it duly replevined said equipment and that subsequently but more than three days thereafter it transported said equipment to a point outside the Territory of Alaska.

#### VII.

Plaintiff denies each and every allegation contained in Paragraph VII thereof.

#### VIII.

Plaintiff denies each and every allegation contained in Paragraph VIII thereof.

#### IX.

Plaintiff denies that it replevined any additional parts or any property whatsoever belonging to de-

fendant, and it further denies that the rental value of the equipment for the unexpired term under the aforesaid contract of March 28, 1929, is \$9,627.03, or any other sum other than the amount as specified in the aforesaid contract of March 28, 1929, and plaintiff denies each and every other allegation contained in said Paragraph IX thereof.

X.

Plaintiff denies each and every allegation contained in Paragraph X of said First Counterclaim.

Replying to defendant's Second Counterclaim contained in his said amended Answer, plaintiff admits, denies and alleges, namely:

I.

Plaintiff admits Paragraph I thereof.

II.

Plaintiff admits Paragraph II thereof. [58]

III.

Plaintiff, in replying to Paragraph III thereof, admits that on March 28, 1929, the parties hereto entered into that certain written contract, a substantial copy whereof is attached to said Amended Answer and marked Exhibit A, but alleges that said contract was made subject to the agreement that the weekly charge to be made by plaintiff for the periodical services therein mentioned and to be paid therefor by defendant to plaintiff had not then been but should be later established by mutual

agreement, which mutual agreement was thereafter made between the parties hereto and reduced to writing in that certain agreement bearing date September 4, 1929, a substantial copy whereof, marked Exhibit 2, is set forth in defendant's Amended Answer.

#### IV.

Plaintiff denies each and every allegation contained in Paragraph IV thereof, except it admits that thereafter plaintiff duly installed, in accordance with said agreements, said equipment in defendant's said theatre.

#### V.

Plaintiff denies each and every allegation contained in Paragraph V of said Second Counterclaim, except that it admits that defendant had not on or about December 30, 1929, fully paid the said sum of \$10,500.00, due to plaintiff from defendant under the aforesaid contract of March 28, 1929, and plaintiff admits that on or about December 30, 1929, defendant paid plaintiff the sum of \$1,011.50, in payment of weekly charges for periodical services theretofore rendered by plaintiff to defendant under the aforesaid contract of March 28, 1929, as modified by that certain agreement dated September 4, 1929, a substantial copy whereof is set forth in defendant's said Amended Answer, and marked Exhibit 2, and that thereafter and on or about February 10, 1930, defendant paid plaintiff the sum of \$119.00 for like service likewise so rendered by

plaintiff to defendant, and thereafter and on or about April 3, 1930, defendant paid plaintiff the sum of \$238.00 for like services likewise so rendered by plaintiff to defendant, and thereafter and on or about November 1, 1930, defendant paid plaintiff the sum of \$208.25 [59] for like services likewise so rendered by plaintiff to defendant.

#### VI.

Plaintiff denies each and every allegation contained in Paragraph VI of said Second Counterclaim.

#### VII.

Plaintiff denies each and every allegation contained in Paragraph VII of said Second Counterclaim.

### FIRST AFFIRMATIVE REPLY.

And, as a further and separate Affirmative Reply not only to defendant's First, Second and Third Affirmative Defenses, to the First Cause of Action contained in plaintiff's Amended Complaint herein, but also to defendant's First and Second Counterclaim contained in his said Amended Answer, plaintiff alleges:

#### I.

That on or about March 28, 1929, the parties hereto made and entered into that certain agreement bearing that date, a substantial copy of which, marked Exhibit A, is attached to said Amended Answer; that at the time of the execution of said

contract said parties mutually agreed that the weekly charge for the services to be rendered thereunder by plaintiff for periodical inspections and minor adjustments had not been established, and that the amount thereof should be later determined and mutually agreed upon by the parties hereto; that thereafter and under date of September 4, 1929, the parties hereto mutually made and entered into the aforesaid agreement of the last named date, a substantial copy whereof, marked Exhibit 2, is set forth in defendant's said Amended Answer, for the purpose of establishing the weekly charge that plaintiff should make and which defendant should pay plaintiff for the periodical services to be rendered by plaintiff under the aforesaid contract of March 28, 1929; that said agreement was actually executed by defendant on or about December 30, 1929, at which time he ratified said agreement by voluntarily paying to plaintiff the weekly charge therein established for the period from the time of the installation of the equipment, mentioned in the aforesaid contract of March 28, 1929, up and until the date of said payment, and which agreement *he* further ratified thereafter from time to time not only by permitting plaintiff to continue to [60] render said services, but also by accepting said services, up and until the time of the bringing of this suit and also by voluntarily paying plaintiff the weekly charge therein established for each week up to and including the week ending May 17, 1930; that plaintiff fully and faithfully performed all the terms of each of said contracts.

## SECOND AFFIRMATIVE REPLY.

And, as a further and separate Affirmative Reply to defendant's First and Second Affirmative Defenses to the First Cause of Action contained in plaintiff's Amended Complaint, plaintiff alleges:

## I.

That that certain agreement, bearing date of September 4, 1929, a substantial copy whereof is pleaded in said Answer and designated as Exhibit 2, was duly signed and executed by the defendant in person in Seattle, Washington, on or about December 30, 1929, and was duly signed and executed by the authorized officer and agent of plaintiff in New York City on or about September 4, 1929, and was executed by said parties for the purpose of modifying that certain agreement theretofore mutually made by them under date of March 28, 1929, a substantial copy whereof, marked Exhibit A, is attached to defendant's said Amended answer, wherein, by agreement between said parties, the amount of the weekly charge that plaintiff should make and that defendant should pay plaintiff for periodical services to be rendered by plaintiff was not inserted but was left to be later established by mutual agreement of the parties hereto.

## THIRD AFFIRMATIVE REPLY.

And, as a further and separate Affirmative Reply to defendant's Third Affirmative Defense to the First Cause of Action, contained in plaintiff's Amended Complaint herein, plaintiff alleges:

## I.

That that certain contract, made by the parties herein on March 28, 1929, a substantial copy whereof, marked Exhibit A, is attached to defendant's Amended Answer as modified by that certain [61] contract bearing date September 4, 1929, a substantial copy whereof, marked Exhibit 2, is pleaded in defendant's said Amended Answer, is separable and divisible in that the provisions thereof, relative to the periodical inspection and minor adjustment services to be rendered thereunder by plaintiff to defendant and for which defendant agreed to pay plaintiff the sum of \$29.75 per week, are entirely distinguishable from and not dependent upon the provisions of said contract as so modified with respect to the repair parts therein mentioned to be furnished by plaintiff to defendant at his request, and that said services were for labor only and were furnished and to be paid for irrespective of whether or not plaintiff furnished to defendant or defendant obtained from plaintiff any repair parts for the moving picture equipment that plaintiff furnished to defendant under said contract.

## FOURTH AFFIRMATIVE REPLY.

And, as a further and separate Affirmative Reply to defendant's First Counterclaim, contained in his said Amended Answer, plaintiff alleges:



## I.

That plaintiff did not replevin or cause to be replevined any of the equipment mentioned in defendant's First Counterclaim nor did plaintiff take or cause to be taken any of said equipment from the possession of defendant, nor did plaintiff deprive defendant of the use of said equipment, nor did plaintiff transport any of said equipment to any point without the Territory of Alaska until after the commencement of this suit; that none of said acts were in existence or had been done at the time of the commencement of this suit.

## FIFTH AFFIRMATIVE REPLY.

And, as a further and separate Affirmative Reply to defendant's First Counterclaim, contained in his said Amended Answer, plaintiff alleges:

## I.

That prior to the institution of the aforesaid suit, numbered and entitled on the records and dockets of this Court as [62] No. 3167-A, Electrical Research Products, Inc., a corporation, Plaintiff, vs. W. D. Gross, Defendant, defendant, in violation of the terms of that certain contract of March 28, 1929, a substantial copy whereof is attached to defendant's said Amended Answer, marked Exhibit A, as modified by that certain contract bearing date September 4, 1929, a substantial copy whereof, marked Exhibit 2, is set forth in defendant's said amended Answer, both of which contracts were

mutually entered into by and between the parties hereto, had obtained and placed in his Coliseum Theatre, in Juneau, Alaska, certain talking moving picture and equipment, and threatened to and was preparing to install it in his said theatre and to discard and reject all of the equipment that had been supplied to him by the plaintiff under the provisions of the aforesaid contracts, and that he installed such other equipment in his theatre on the same day whereupon plaintiff, in pursuance to a writ of replevin, duly issued out of this court in the above-mentioned action, caused the same to be replevined.

#### SIXTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's First and Second Affirmative Defenses to the First Cause of Action, contained in plaintiff's Amended Complaint herein, and to defendant's Third Affirmative Defense to the First Cause of Action, contained in plaintiff's Amended Complaint herein, and to defendant's First and Second Counterclaims, contained in his said Amended Answer, plaintiff alleges:

#### I.

. That on or about March 28, 1929, the parties hereto made and entered into that certain agreement bearing that date, a substantial copy of which, marked Exhibit A, is attached to said Amended

Answer; that at the time of the execution of said contract said parties mutually agreed that the weekly charge for the services to be rendered thereunder by plaintiff for periodical inspections had not been established, and that the amount thereof should be later determined and mutually agreed upon by the parties hereto; that thereafter and under date of September 4, 1929, in pursuance to said agreement and for the purpose of modifying [63] thereby said previous agreement of March 28, 1929, and to establish the weekly charge that plaintiff should make and which defendant should pay plaintiff for the periodical services to be rendered by plaintiff under the aforesaid contract of March 28, 1929, the parties hereto mutually made and entered into that certain agreement, a substantial copy whereof, marked Exhibit 2, is set forth in defendant's said Amended Answer; that said last mentioned agreement was actually executed by defendant in person on or about December 30, 1929.

## II.

That plaintiff, in reliance upon said agreement of March 28, 1929, as so modified by said agreement bearing date September 4, 1929, rendered and performed, at its own cost, periodical inspection and minor adjustment services to defendant in respect to his Coliseum Theatre in Juneau, Alaska, at all times from and after the installation by defendant in said theatre of that certain moving picture equipment furnished to defendant by plaintiff under said

agreement of March 28, 1929, not only up and until December 30, 1929, on which date defendant executed said supplemental agreement of September 4, 1929, but also thereafter from said December 30, 1929, up and until March 7, 1931, and also offered and was willing so to do, but was prevented by defendant therefrom, thereafter and up to April 20, 1931; that plaintiff fully and faithfully performed all the terms of each of said contracts.

### III.

That defendant at all of said times knew that plaintiff was rendering and performing said services in reliance upon defendant's performance of the terms of the aforesaid contracts, and defendant, so knowing, accepted said services and permitted them to be rendered and performed by plaintiff; that by his said acceptance of said services in pursuance to said agreements, defendant is estopped from now claiming that either of said agreements were null and void in respect to the services so rendered to defendant by plaintiff thereunder and for none of which services, so rendered and [64] performed subsequent to May 17, 1930, has defendant ever paid plaintiff anything whatsoever.

Replying to that certain Defense which is directed to the Second Cause of Action contained in plaintiff's Amended Complaint and which is denominated "Fourth Affirmative Defense" in defendant's said Amended Answer, plaintiff admits, denies and alleges, namely:

## I.

Plaintiff admits the allegations contained in Paragraph I, thereof.

## II.

Plaintiff denies each and every allegation contained in Paragraph II of Fourth Affirmative Defense, and plaintiff alleges that that certain contract made and entered into by the parties hereto on March 28, 1929, a substantial copy whereof, marked Exhibit B, is attached to defendant's said Amended Answer, was, after its execution, mutually modified by that certain subsequent agreement made and entered into by the parties hereto under date of September 4, 1929, a substantial copy whereof is set forth in Paragraph III of said Fourth Affirmative Defense.

## III.

Plaintiff admits that the document, designated as Exhibit 4, set forth in Paragraph III of said Fourth Affirmative Defense, is a substantial copy of that certain agreement made and entered into by and between the parties hereto under date of September 4, 1929, and alleges that the aforesaid agreement of March 28, 1929, was mutually modified by the parties hereto by said subsequent agreement, Exhibit 4, of September 4, 1929; plaintiff denies each and every allegation of Sections b and c, contained in said Paragraph III; plaintiff denies each and every allegation of Section d, contained in said Paragraph III, and plaintiff denies that defendant, at the time defendant executed said agreement of

September 4, 1929, had fully paid plaintiff the sums theretofore becoming or then due plaintiff under either said contract of March 28, 1929, or under that contract as modified by said contract dated September 4, 1929, and plaintiff denies each and every allegation in said Paragraph III contained. [65]

#### IV.

Plaintiff denies each and every allegation contained in Paragraph IV of said Fourth Affirmative Defense.

Replying to that certain affirmative defense which is directed to the Second Cause of Action contained in plaintiff's Amended Complaint and which is designated as "Fifth Affirmative Defense" in defendant's said Amended Answer, plaintiff admits, denies and alleges, namely:

#### I.

Plaintiff not only denies that it failed to make the periodical inspections and render the minor adjustment services as agreed by it in that certain contract of March 28, 1929, a copy whereof is attached to defendant's said Amended Answer, marked Exhibit B, as modified by that certain agreement bearing date of September 4, 1929, a substantial copy whereof, marked Exhibit 4, is set forth in defendant's said Amended Answer, but also denies that said contracts or either of them required plaintiff to make regular periodical inspections or to render regular periodical minor adjustment services, and

plaintiff denies that the word "service" when used in connection with equipment, by these engaged in the motion picture industry, means the service necessary to keep the equipment in repair at all times, and plaintiff further denies each and every other allegation contained in defendant's said Fifth Affirmative Defense.

Replying to that certain affirmative defense which is directed to the Second Cause of Action contained in plaintiff's Amended Complaint and which is denominated "Sixth Affirmative Defense" in defendant's said Amended Answer, plaintiff admits, denies and alleges, namely:

#### I.

Plaintiff admits that the machinery, appliances, equipment and repair parts, mentioned in plaintiff's Amended Complaint herein and in that certain contract of March 28, 1929, a substantial copy whereof, marked Exhibit B, is attached to defendant's said Amended Answer, were shipped from [66] a point within the United States to the Territory of Alaska, and denies each and every other allegation in said Paragraph I contained.

#### II.

Plaintiff denies each and every allegation contained in Paragraph II and III of said Sixth Affirmative Defense.

Replying to defendant's Third Counterclaim contained in his said Amended Answer, plaintiff admits, denies and alleges, namely:

## I.

Plaintiff admits Paragraph I thereof.

## II.

Plaintiff admits Paragraph II thereof.

## III.

Plaintiff, in replying to Paragraph III thereof, admits that on March 28, 1929, the parties hereto entered into that certain written contract, a substantial copy whereof is attached to said Amended Answer and marked Exhibit B, but alleges that said contract was made subject to the agreement that the weekly charge to be made by plaintiff for the periodical services therein mentioned and to be paid therefor by defendant to plaintiff had not then been but should be later established by mutual agreement, which mutual agreement was thereafter made between the parties hereto and reduced to writing in that certain agreement bearing date September 4, 1929, a substantial copy whereof, marked Exhibit 4, is set forth in defendant's said Amended Answer.

## IV.

Plaintiff denies each and every allegation contained in Paragraph IV thereof, except it admits that in accordance with said contract of March 28, 1929, which was subsequently modified by the parties hereto by that certain contract of September 4, 1929, a substantial copy whereof is set forth in said Amended Answer, plaintiff duly installed said equipment in defendant's said theatre.



## V.

Plaintiff admits that, after the installation of said [67] equipment, defendant used said equipment in the operation of his Coliseum Theatre in Ketchikan, Alaska, but plaintiff denies each and every other allegation in said Paragraph V contained.

## VI.

Plaintiff denies each and every allegation contained in paragraph VI thereof, except plaintiff admits that it instituted this suit on or about April 20, 1931, in this court and that thereafter it duly replevined said equipment and that subsequently but more than three days thereafter it transported said equipment to a point outside the Territory of Alaska.

## VII.

Plaintiff denies each and every allegation contained in Paragraph VII thereof.

## VIII.

Plaintiff denies each and every allegation contained in Paragraph VIII thereof.

## IX.

Plaintiff denies that it replevined any additional parts or any property whatsoever belonging to defendant, and it further denies that the rental value of the equipment for the unexpired terms under the aforesaid contract of March 28, 1929, is \$9,648.65, or any other sum other than the amount

as specified in the aforesaid contract of *of* March 28, 1929, and plaintiff denies each and every other allegation contained in said Paragraph IX thereof.

Replying to defendant's Fourth Counterclaim contained in his said Amended Answer, plaintiff admits, denies and alleges, namely:

I.

Plaintiff admits Paragraph I thereof.

II.

Plaintiff admits Paragraph II thereof.

III.

Plaintiff, in replying to Paragraph III thereof, admits that on March 28, 1929, the parties hereto entered into that certain written contract, a substantial copy whereof is attached to said amended Answer and marked Exhibit B, but alleges that said [68] contract was made subject to the agreement that the weekly charge to be made by plaintiff for the periodical services therein mentioned and to be paid therefor by defendant to plaintiff had not then been but should be later established by mutual agreement, which mutual agreement was thereafter made between the parties hereto and reduced to writing in that certain agreement bearing date September 4, 1929, a substantial copy whereof, marked Exhibit 4, is set forth in defendant's said Amended Answer.

## IV.

Plaintiff denies each and every allegation contained in Paragraph IV thereof, except that it admits that thereafter plaintiff duly installed, in accordance with said agreements, said equipment in defendant's said theatre.

## V.

Plaintiff denies each and every allegation contained in Paragraph V of said Fourth Counterclaim, except that it admits that defendant had not on or about December 30, 1929, fully paid the said sum of \$10,500.00, due to plaintiff from defendant under the aforesaid contract of March 28, 1929, and plaintiff admits that on or about December 30, 1929, defendant paid plaintiff the sum of \$952.00, in payment of the weekly charges for periodical services theretofore rendered by plaintiff to defendant under the aforesaid contract of March 28, 1929, as modified by that certain agreement dated September 4, 1929, a substantial copy whereof is set forth in defendant's said Amended Answer, and marked Exhibit 4, and that thereafter and on or about February 10, 1930, defendant paid plaintiff the sum of \$119.00 for like services likewise so rendered by plaintiff to defendant, and thereafter and on or about April 3, 1930, defendant paid plaintiff the sum of \$238.00 for like services likewise so rendered by plaintiff to defendant, and thereafter and on or about November 1, 1930, defendant paid plaintiff

the sum of \$208.25 for like services likewise so rendered by plaintiff to defendant. [69]

#### VI.

Plaintiff denies each and every allegation contained in Paragraph VI of said Fourth Counterclaim.

#### VII.

Plaintiff denies each and every allegation contained in Paragraph VII of said Fourth Counterclaim.

### SEVENTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply not only to defendant's Fourth, Fifth and Sixth Affirmative Defenses but also to defendant's Third and Fourth Counterclaims contained in his said Amended Answer, plaintiff alleges, namely:

#### I.

That on or about March 28, 1929, the parties hereto made and entered into that certain agreement bearing that date, a substantial copy of which, marked Exhibit B, it attached to said Amended Answer; that at the time of the execution of said contract said parties mutually agreed that the weekly charge for the services to be rendered thereunder by plaintiff for periodical inspections and minor adjustments had not been established, and that the amount thereof should be later determined and mutually agreed upon by the parties hereto; that thereafter and under date of September 4, 1929,

the parties hereto mutually made and entered into the aforesaid agreement of the last named date, a substantial copy whereof, marked Exhibit 4, is set forth in defendant's said Amended Answer, for the purpose of establishing the weekly charge that plaintiff should make and which defendant should pay plaintiff for the periodical services to be rendered by plaintiff under the aforesaid contract of March 28, 1929; that said agreement was actually executed by defendant on or about December 30, 1929, at which time he ratified said agreement by voluntarily paying to plaintiff the weekly charge therein established for the period from the time of the installation of the equipment, mentioned in the aforesaid contract of March 28, 1929, up and until the date of said payment, and which agreement he further ratified thereafter from time to time not only by permitting plaintiff to continue to render said services but also by accepting said services up and [70] until the time of the bringing of this suit and also by voluntarily paying plaintiff the weekly charge therein established for each week up to and including the week ending May 17, 1930; that plaintiff fully and faithfully performed all the terms of each of said contracts.

#### EIGHTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's Fourth Affirmative Defense, contained in his said Amended Answer, plaintiff alleges:

## I.

That that certain agreement, bearing date of September 4, 1929, a substantial copy whereof is pleaded in said Answer and designated as Exhibit 4, was duly signed and executed by the defendant in person in Seattle, Washington, on or about December 30, 1929, and was duly signed and executed by the authorized officer and agent of plaintiff in New York City on or about September 4, 1929, and was executed by said parties for the purpose of modifying that certain agreement theretofore mutually made by them under date of March 28, 1929, a substantial copy whereof, marked Exhibit B, is attached to defendant's said Amended Answer, wherein, by agreement between said parties, the amount of the weekly charge that plaintiff should make and that defendant should pay plaintiff for periodical services to be rendered by plaintiff was not inserted but was left to be later established by mutual agreement of the parties hereto.

## NINTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's Sixth Affirmative Defense contained in his said Amended Answer, plaintiff alleges:

## I.

That that certain contract, made by the parties herein on March 28, 1929, a substantial copy whereof, marked Exhibit B, is attached to defendant's Amended Answer, as modified by that certain

contract bearing date September 4, 1929, a substantial copy whereof, marked Exhibit 4, is pleaded in defendant's said Amended Answer, is separable and divisible in that the provisions [71] thereof, relative to the periodical inspection and minor adjustment services to be rendered thereunder by plaintiff to defendant and for which defendant agreed to pay plaintiff the sum of \$29.75 per week, are entirely distinguishable from and not dependent upon the provisions of said contract as so modified with respect to the repair parts therein mentioned to be furnished by plaintiff to defendant at his request, and that said services were for labor only and were furnished and to be paid for irrespective of whether or not plaintiff furnished to defendant or defendant obtained from plaintiff any repair parts for the moving picture equipment that plaintiff furnished to defendant under said contract.

#### TENTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's Third Counterclaim, contained in his said Amended Answer, plaintiff alleges:

##### I.

That plaintiff did not replevin or cause to be replevined any of the equipment mentioned in defendant's First Counterclaim nor did plaintiff take or cause to be taken any of said equipment from the possession of defendant, nor did plaintiff deprive defendant of the use of said equipment, nor did

plaintiff transport any of said equipment to any point without the Territory of Alaska until after the commencement of this suit; that none of said acts were in existence or had been done at the time of the commencement of this suit.

#### ELEVENTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's Third Counterclaim, contained in his said Amended Answer, plaintiff alleges:

##### I.

That prior to the institution of the aforesaid suit, numbered and entitled on the records and dockets of this court as No. 3167-A, Electrical Research Products, Inc., a corporation, Plaintiff, vs. W. D. Gross, Defendant, defendant, in violation of [72] the terms of that certain contract of March 28, 1929, a substantial copy whereof is attached to defendant's said Amended Answer, marked Exhibit B, as modified by that certain contract bearing date September 4, 1929, a substantial copy whereof, marked Exhibit 4, is set forth in defendant's said Amended Answer, both of which contracts were mutually entered into by and between the parties hereto, had obtained and placed in his Coliseum Theatre, in Ketchikan, Alaska, certain talking moving picture equipment, and had removed from said theatre and no longer used therein the equipment so theretofore installed therein by plaintiff in pursuance to the aforesaid contracts with defendant, all of which acts



were done by defendant prior to the institution of said action and prior to the issuance of and to the services of any writ of replevin herein.

## TWELFTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's Fourth, Fifth and Sixth Affirmative Defenses and the Third and Fourth Counterclaims, contained in his said Amended Answer, plaintiff alleges:

### I.

That on or about March 28, 1929, the parties hereto made and entered into that certain agreement bearing that date, a substantial copy of which, marked Exhibit B, is attached to said Amended Answer; that at the time of the execution of said contract said parties mutually agreed that the weekly charge for the services to be rendered thereunder by plaintiff for periodical inspections had not been established and that the amount thereof should be later determined and mutually agreed upon by the parties hereto; that thereafter and under date of September 4, 1929, in pursuance to said agreement and for the purpose of modifying thereby said previous agreement of March 28, 1929, and to establish the weekly charge that plaintiff should make and which defendant should pay plaintiff for the periodical services to be rendered by plaintiff under the aforesaid contract of March 28, 1929; the parties hereto mutually made and entered

into that certain agreement, a substantial copy whereof, marked Exhibit 4, is set forth in [73] defendant's said Amended Answer; that said last mentioned agreement was actually executed by defendant in person on or about December 30, 1929.

## II.

That plaintiff, in reliance upon said agreement of March 28, 1929, as so modified by said agreement bearing date September 4, 1929, rendered and performed, at its own cost, periodical inspection and minor adjustment services to defendant in respect to his Coliseum Theatre in Ketchikan, Alaska, at all times from and after the installation by defendant in said theatre of that certain moving picture equipment furnished to defendant by plaintiff under said agreement of March 28, 1929, not only up and until December 20, 1929, on which date defendant executed said supplemental agreement of September 4, 1929, but also thereafter from said December 30, 1929, up and until March 7, 1931, and also offered and was willing so to do, but was prevented by defendant therefrom, thereafter and up to April 20, 1931; that plaintiff fully and faithfully performed all the terms of each of said contracts.

## III.

That defendant at all of said times knew that plaintiff was rendering and performing said services in reliance upon defendant's performance of the terms of the aforesaid contracts, and defendant, so

knowing, accepted said services and permitted them to be rendered and performed to him by plaintiff; that by his said acceptance of said services in pursuance to said agreements, defendant is estopped from now claiming that either of said agreements were null and void in respect to the services so rendered to defendant by plaintiff thereunder and for none of which services, so rendered and performed subsequent to May 17, 1930, has defendant ever paid plaintiff anything whatsoever.

### THIRTEENTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's First Counterclaim contained in his said Amended Answer, plaintiff alleges: [74]

#### I.

That there is another action pending for the same cause between these same parties, namely: Defendant seeks to recover and counterclaim from plaintiff upon the same cause the same sums, as contained in his said First Counterclaim herein, as in that certain pleading denominated by him "First Counterclaim" in that certain suit entitled and numbered upon the records and dockets of this Honorable Court, No. 3158-A, Electrical Research Products, Inc., a corporation, Plaintiff, vs. W. D. Gross, Defendant, which last named suit, including said counterclaim therein, is now pending in this court between these same parties.

## FOURTEENTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's Second Counterclaim contained in his said Amended Answer, plaintiff alleges:

## I.

That there is another action pending for the same cause between these same parties, namely: Defendant seeks to recover and counterclaim from plaintiff upon the same cause the same sums, as contained in his said Second Counterclaim herein, as in that certain pleading denominated by him "Second Counterclaim" in that certain suit entitled and numbered upon the records and dockets of this Honorable Court, No. 3158-A, *Electrical Research Products, Inc., a corporation, Plaintiff, vs. W. D. Gross, Defendant*, which last named suit, including said counterclaim therein, is now pending in this court between these same parties.

## FIFTEENTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's Third Counterclaim contained in his said Amended Answer, plaintiff alleges:

## I.

That there is another action pending for the same cause between these same parties, namely: Defendant seeks to recover and counterclaim from plaintiff upon the same cause the same sums, as contained in his said Third Counterclaim herein, as in that certain pleading denominated by his "Third Counter-

claim" in that [75] certain suit entitled and numbered upon the records and dockets of this Honorable Court, No. 3158-A; Electrical Research Products, Inc., a corporation, Plaintiff, vs. W. D. Gross, Defendant, which last named suit, including said counterclaim therein, is now pending in this court between these same parties.

### SIXTEENTH AFFIRMATIVE REPLY

And, as a further and separate Affirmative Reply to defendant's Fourth Counterclaim contained in his said Amended Answer, plaintiff alleges:

#### I.

That this is another action pending for the same cause between these same parties, namely: Defendant seeks to *recover plaintiff* upon the same cause the same sums, as contained in his said Fourth Counterclaim herein, as in that certain pleading denominated by his "Fourth Counterclaim" in that certain suit entitled and numbered upon the records and dockets of this Honorable Court, No. 3158-A, Electrical Research Products, Inc., a corporation, plaintiff, vs. W. D. Gross, Defendant, which last named suit, including said counterclaim therein, is now pending in this court between these same parties.

WHEREFORE, Plaintiff renews its prayer as in its Amended Complaint herein contained, and further prays that defendant may take nothing by his

Amended Answer herein or by his several Counter-claims therein contained.

Respectfully,

HENRY RODEN

R. E. ROBERTSON

Attorneys for Plaintiff. [76]

United States of America,  
Territory of Alaska.—ss.

H. M. WILCOX, being first duly sworn on oath, deposes and says: That he is vice president of the corporate plaintiff; that he has read the foregoing reply, knows the contents thereof, and that the same is true as he verily believes.

H. M. WILCOX

Subscribed and sworn before me this 19th day of January, 1935.

[Seal]

R. E. ROBERTSON

Notary Public for Alaska.

My commission expires June 24, 1937.

[Endorsed]: Copy received January 19, 1935.

J. A. HELLENTHAL

Attorney for Defendant.

[Endorsed] Filed January 21, 1935. [77]

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[Title of Court and Cause.]

VERDICT.

We, the Jury, empaneled and sworn in the above entitled cause, find for the defendant generally and

against the plaintiff upon the issues presented by the First Cause of Action stated in the Complaint.

We, the Jury, empaneled and sworn in the above entitled cause, further find for the defendant generally and against the plaintiff, upon the issues presented by the Second Cause of Action stated in the Complaint.

We, the Jury, empaneled in the above entitled cause, further find for the defendant generally and against the plaintiff upon the issues presented by the First Counter-Claim pleaded in the Answer against the First Cause of Action set up in the plaintiff's Complaint; and in this connection we assess the defendant's damages as follows:

- (1) The rental value of the equipment taken from the "Coliseum" theatre at Juneau, under a writ of replevin in this action: \$ 9000.00
  - (2) Damages resulting from the loss of profits to the defendant by reason of the removal of the equipment from the "Coliseum" theatre at Juneau: \$19440.00
- [78]
- (3) Damages resulting to the defendant because of monies expended to reduce damages resulting from the removal of the equipment from the "Coliseum" theatre at Juneau: \$ 2628.92

We, the Jury, empaneled and sworn in the above entitled cause, further find for the defendant gen-

erally and against the plaintiff upon the issues presented by the Second-Counter Claim to the First Cause of Action and fix the amount of the recovery on said Counter-Claim at \$1725.77.

We, the Jury, empaneled and sworn in the above entitled cause further find for the defendant generally and against the plaintiff upon the issues presented by the Third-Counter Claim, the same being the First Counter-Claim to the Second Cause of Action, and assess the defendant's damages as follows:

- (1) The rental value of the equipment taken from the "Coliseum" theatre at Ketchikan, under a writ of replevin in this action: \$ 9000.00
- (2) Damages resulting from the loss of profits to the defendant by reason of the removal of the equipment from the "Coliseum" theatre at Ketchikan: \$12320.00
- (3) Damages resulting to the defendant because of monies expended to reduce damages resulting from the removal of the equipment from the "Coliseum" theatre at Ketchikan: \$ 2628.92

We, the Jury, further find for the defendant generally and against the plaintiff upon the issues presented by the Fourth [79] Counter-Claim, the same being the Second Counter-Claim to the Second-



Cause of Action, and fix the amount of recovery on the said Counter-Claim at \$1692.72.

JOSEPH SIMPSON,

Foreman.

[Endorsed]: Filed Feb. 14, 1935.

[Endorsed]: Entered Court Journal No. 9, page 330. [80]

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[Title of Court and Cause.]

MOTION FOR NEW TRIAL.

Comes now the plaintiff and respectfully moves that it be granted a new trial herein upon the following grounds, to-wit:

1. Irregularity in the proceedings of the court and abuse of discretion whereby plaintiff was prevented from having a fair trial and particularly in the making of that certain order of the court whereby, over plaintiff's objection, the defendant although having made and filed his answer to plaintiff's amended complaint herein on August 31, 1931, was granted permission to file more than two and one-half years thereafter his amended answer herein on March 28, 1934, which amended answer was substantially in form the same as defendant's said previous answer other than in said amended answer defendant by his third and sixth affirmative defenses alleged that the contracts of September 4, 1929, as well as the contracts of March 28, 1929, which latter contracts were alleged to be valid contracts by defendant in his first and fourth defenses

and in his first and third counterclaims, both in said original and said amended answer, were null and void under the Clayton and Sherman Anti-Trust Acts, but which third and sixth affirmative defenses were stricken at the trial of this cause, and the effect of the filing of which amended answer was to deprive plaintiff of the benefit of the provisions of Section 896, Compiled Laws of Alaska 1913, which was in effect not only when this cause was commenced but also at the time of the filing of plaintiff's said amended complaint herein and of defendant's said original answer herein and continued in effect up and until ninety days after [81] April 1, 1933, on which last named date it was amended by Chapter 6, Alaska Session Laws 1933 (Sec. 3422 Compiled Laws of Alaska, 1933) and particularly in the making of that certain order of the court whereby, over plaintiff's objection, the defendant was permitted to amend his said amended answer in accordance with his motion filed herein on January 3, 1935, and particularly in the making of that certain order of the court whereby, over plaintiff's objection, it set this cause for trial and required plaintiff to go to trial with this cause prior to the trial of that certain cause between the parties hereto which is now pending upon the dockets and records of this court, namely No. 3158-A, Electrical Research Products, Inc., a corporation, plaintiff, vs. W. D. Gross, defendant, which last named cause was commenced on March 7, 1931, and was at issue at the time that the court made its said order herein

complained of and which cause, under the rules and customary practice of this court, plaintiff was entitled to have tried prior to the trial of this cause which was not commenced until April 20, 1931, and also the irregularity in the proceedings of the court and the adverse party as set forth in paragraph 2 hereof.

2. Accident and surprise, against which by the exercise of ordinary prudence plaintiff could not be guarded, occurring at the trial of this cause, namely: plaintiff in rebuttal offered in evidence copies of the income tax returns of defendant, furnished for inspection to plaintiff by defendant after the trial herein had commenced, and the reception whereof in evidence was thereupon objected to by the defendant through his counsel, in open court and in the presence of the jury, upon the ground among others that the defendant's witness Charles Tuckett had been released by defendant from attendance of the trial and had departed from the Territory of Alaska two or three days previously and that therefore, since defendant prior to said witness' departure had stated in open court that said witness was going to depart, it was unfair [82] for plaintiff to put in evidence, after his departure, said copies of said income tax returns; that said copies of said income tax returns thereupon were refused admittance in evidence by the court notwithstanding that plaintiff was under no duty to keep said defendant's witness in attendance and which witness plaintiff then had no way of bringing back within the jurisdiction of this court.

3. Excessive damages, appearing to have been given under the influence of passion and prejudice in that the damages allowed defendant constitute double damages and give the defendant damages for refunds of rentals of the equipments for the period from April 20, 1931, to May 1, 1933, for the Juneau theatre and for the period from April 28, 1931, to May 1, 1933, for the Ketchikan theatre, notwithstanding the jury gave the defendant damages for the same respective periods in the way of alleged lost profits without in any wise deducting therefrom the rental value of the sound reproducing equipment in said theatres for said respective periods, and furthermore in that the damages allowed for alleged rental value failed to take into consideration that defendant had in his possession the equipments in his said two theatres for approximately two years each, namely Juneau from May 11, 1929, to April 20, 1931, and in his Ketchikan theatre from June 1, 1929, to April 28, 1931; and also allowed defendant damages for alleged cost of substituted or replacing equipments, notwithstanding the allowance of damages for alleged lost profits as aforesaid; and also allowed the defendant damages as alleged lost profits of both his Juneau and Ketchikan theatres notwithstanding that no evidence definitely and certainly establishing the alleged amount, if any, of lost profits at either of said theatres was received at the trial, and further no evidence was received herein from which could be computed the respective amounts of damages as allowed in said verdict as

lost profits for the Juneau and Ketchikan theatres and that such damages necessarily must have been based upon either a compromise or an average unjustifiably used by the jury or else by some method such as [83] taking interest on some unknown sum for some unknown period and plaintiff alleges that they were computed upon the basis of either eight or ten per cent upon the respective amounts claimed by defendant at the trial as being the appraised values respectively of his Ketchikan and Juneau theatres; and said damages were computed in utter disregard of the effect upon the receipts in defendant's said theatres not only of the general financial depression prevailing in Ketchikan and Juneau, Alaska, during all of the period in question but also of the competing moving picture theatres, Capitol in Juneau, and Revilla in Ketchikan, and that each of the items of damages allowed in said verdict includes interest upon unliquidated claims and that there is no means of segregating what part of each of said item of damages is principal and what part is interest; and that none of which damages could have been arrived at under the evidence except through the influence of passion and prejudice.

4. Insufficiency of evidence to justify the verdict in any respects and that it is against the law particularly in that neither the first nor fourth affirmative defenses properly or sufficiently pleaded either want of consideration or duress in the execution of, or non-execution of, the contracts of September 4,

1929, and further that duress in the execution of the contracts of September 4, 1929, was neither sufficiently pleaded nor proved herein to constitute either a defense or a counterclaim, and in that neither the first, second, third, nor fourth counterclaims, upon which the damages contained in the verdict were assessed, could properly be pleaded as against or constituted valid counterclaims to plaintiff's amended complaint herein, and that no evidence was offered or received definitely and certainly establishing the alleged lost profits by defendant at either his Juneau or Ketchikan theatres.

5. Errors in law occurring at the trial and excepted to by the plaintiff and particularly the reception of evidence offered by [84] defendant over plaintiff's objection and the denial over plaintiff's objection of evidence offered by it, all of which more particularly appears in the record of the proceedings of said trial made by the official court reporter, and all of which will appear in the transcript of such record, and all of which by reference thereto is hereby made a part hereof, and also in the denial of plaintiff's motions made during the trial and to which rulings the plaintiff then and there excepted, and in the failure to give plaintiff's requested instructions Nos. 2, 3, 6, 7, 9, 10, 11, 12, 13, 16, 17, 18, 19, 22, and also in giving, over plaintiff's objection of the court's instructions Nos. 2, 3, 4, 5, 7, 8, 9, 10, 11, and in submitting to the jury the form of verdict prepared by defendant which form was used

by the jury in returning their verdict herein; and to all of which plaintiff excepted at the trial.

WHEREFORE, Plaintiff moves and prays that it may be granted a new trial herein.

Respectfully submitted,

HENRY RODEN,

R. E. ROBERTSON,

Attorneys for Plaintiff.

Copy received February 16, 1935,

J. A. HELLENTHAL,

Attorneys for Defendant. [85]

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[Title of Court and Cause.]

MOTION FOR JUDGMENT NOTWITH-  
STANDING THE VERDICT.

Comes now the plaintiff and, notwithstanding the verdict herein, respectfully moves:

(1) That judgment be entered herein in favor of the plaintiff and against the defendant on the first cause of action contained in plaintiff's amended complaint herein and to the effect that plaintiff was entitled, at the time of the commencement of this cause, to the possession of the personal property mentioned in its said first cause of action; and

(2) That judgment be entered herein in favor of the plaintiff and against the defendant on the second cause of action contained in plaintiff's

amended complaint herein and to the effect that plaintiff was entitled, at the time of the commencement of this cause, to the possession of the personal property mentioned in its said second cause of action.

Respectfully submitted,

HENRY RODEN,

R. E. ROBERTSON,

Attorneys for Plaintiff.

Copy received February 16, 1935.

J. A. HELLENTHAL,

Attorneys for Defendant.

[Endorsed]: Filed Feb. 16, 1935. [86]

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[Title of Court and Cause.]

#### MINUTE ORDER.

Now at this time this matter comes before the court upon motion for judgment notwithstanding the verdict, also a motion for a new trial. R. E. Robertson appears in behalf of plaintiff and J. A. Helleenthal and H. L. Faulkner in behalf of defendant. Whereupon the court being fully advised by arguments submitted by counsel, overruled both motions. Whereupon the plaintiffs take an exception to the ruling on both motions which the court allows.



The above minute order is as entered on page 344 of the Civil and Criminal Journal Number 9 of the above-entitled Court. [87]

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In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 3167-A

ELECTRICAL RESEARCH PRODUCTS, Inc.,  
a corporation,

Plaintiff,

vs.

W. D. GROSS,

Defendant.

### JUDGMENT.

This matter came on regularly for trial on the 21st day of January, 1935, and all parties being present in Court and represented by counsel, a jury was regularly empaneled and sworn to try the issues. Evidence was adduced by both parties; and after all the evidence had been presented and submitted, and after the arguments of counsel had been had, and the Court's instructions had been given, the Jury retired to deliberate of their verdict. And the Jury after due deliberation returned into the Court the following verdict:

In the District Court for the Territory of Alaska,  
Division Number One, at Juneau.

No. 3167-A

ELECTRICAL RESEARCH PRODUCTS, Inc.,  
a corporation,

Plaintiff,

vs.

W. D. GROSS,

Defendant.

### VERDICT.

We, the Jury, empaneled and sworn in the above entitled cause, find for the defendant generally and against the plaintiff upon the issues presented by the First Cause of Action stated in the Complaint.

We, the jury, empaneled and sworn in the above entitled cause, further find for the defendant generally and against the plaintiff, upon the issues presented by the Second Cause of Action stated in the Complaint.

We, the Jury, empaneled in the above entitled cause, further find for the defendant generally and against the plaintiff upon the issues presented by the First Counter-Claim pleaded in the Answer against the First Cause of Action set up in the plaintiff's Complaint; and in this connection we assess the defendant's damages as follows: [88]

- (1) The rental value of the equipment taken from the "Coliseum" theatre at Juneau, under a writ of replevin in this action: \$ 9,000.00
- (2) Damages resulting from the loss of profits to the defendant by reason of the removal of the equipment from the "Coliseum" theatre at Juneau: 19,440.00
- (3) Damages resulting to the defendant because of monies expended to reduce damages resulting from the removal of the equipment from the "Coliseum" theatre at Juneau: 2,628.92

We, the Jury empaneled and sworn in the above entitled cause, further find for the defendant generally and against the plaintiff upon the issues presented by the Second Counter-Claim to the First Cause of Action, and fix the amount of the recovery on said Counter-Claim at \$1,725.77.

We, the Jury empaneled and sworn in the above entitled cause, further find for the defendant generally and against the plaintiff upon the issues presented by the Third Counter-Claim, the same being the First Counter-Claim to the Second Cause of Action, and assess the defendant's damages as follows:

- (1) The rental value of the requirement taken from the "Coliseum" theatre at Ketchikan, under a writ of replevin in this action: \$ 9,000.00
- [89]
- (2) Damages resulting from the loss of profits to the defendant by reason of the removal of the equipment from the "Coliseum" theatre at Ketchikan: \$12,320.00
- (3) Damages resulting to the defendant because of monies expended to reduce damages resulting from the removal of the equipment from the "Coliseum" theatre at Ketchikan: 2,628.92

We, the Jury, further find for the defendant generally and against the plaintiff upon the issues presented by the Fourth Counter-Claim, the same being the Second Counter-Claim to the Second Cause of Action, and fix the amount of recovery on the said Counter-Claim at \$1,692.72.

JOSEPH SIMPSON

(Foreman)

Thereafter, a motion for judgment non obstante veredicto was duly and regularly filed and regularly denied by the Court; a motion for a new trial was also regularly filed and duly and regularly denied by the Court.

And evidence relating to the question of what is a reasonable attorney fee to be allowed the defendant having been presented to the Court, and the Court

having found that \$7500.00, is a reasonable attorney fee to be allowed the defendant in connection with the trial and presentation of this cause, and having fixed that amount as a reasonable attorney fee to be recovered by the defendant herein; and the Court being fully advised in the premises;

IT IS CONSIDERED, ORDERED, AND ADJUDGED, that the complaint of the plaintiff be dismissed; that it take nothing by reason thereof; that the plaintiff recover nothing by reason of its First Cause of Action stated in the complaint; and that it recover nothing by reason of its Second Cause of Action stated in the complaint; that the defendant have and recover of and [90] from the plaintiff and he is hereby given judgment against the plaintiff for the full sum of Fifty Eight Thousand Four Hundred Thirty Six Dollars and Thirty-Three Cents, (\$58,436.33), the same being the total sum due the defendant from the plaintiff by reason of the four (4) Counter-Claims referred to in the Verdict above set forth; and that the defendant also have judgment against the plaintiff for \$7500.00 as a reasonable attorney fee herein; and that the defendant further have judgment against the plaintiff and recover from it interest at eight (8%) per cent from the date hereof on all monies due him under this judgment, together with his costs and disbursements herein, to be taxed at \$.....; and that the plaintiff have an exception to the allowance of any attorney fees herein and to rendition of this judgment.

DONE in open Court this 16th day of March, 1935.

GEO. F. ALEXANDER

Judge.

[Endorsed]: Filed Mar. 19, 1935.

[Endorsed]: Entered Court Journal No. 9, page 375. [91]

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[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS.

Comes now the plaintiff, Electrical Research Products, Inc., a corporation, by its attorneys, and respectfully assigns, in connection with its petition for appeal herein, the following errors committed in the proceedings and in the trial of the above entitled cause, which it intends to urge upon the hearing of the appeal herein and upon which it relies to reverse the judgment entered herein on March 16, 1935. in favor of the defendant and against the plaintiff for \$58,436.33 and for the further sum of \$7,500.00 as attorney fees and for costs and interest.

##### 1.

The Court erred in instructing the jury as follows (Court's instruction No. 7, Paragraph 2, commencing line 15, page 23):

“And in this connection, I instruct you that the said agreements (of March 28, 1929) or

either of them, do not require the defendant Gross to pay the plaintiff for periodical inspection and minor adjustment services.”

to which instruction, plaintiff excepted as follows:

“Take exception to instruction number 7, particularly that part of it commencing at line 15, page 23, as not being a true statement as to the effect of the contracts exhibits “1” and “3” of March 28th, 1929, and is not a statement in accord with either the law governing the contracts of March 28, 1929, or the facts produced in evidence as shown by the contract itself. We take the position there that throughout the case the omission of the amount in paragraph 6 does not make the service free.”

2.

The Court erred in instructing the jury as follows (Court’s instruction No. 2, paragraph 8, commencing line 20, page 13): [92]

“And in this connection, I further instruct you that if you believe from the evidence that at the time of the execution of these alleged contracts (of September 4, 1929) the plaintiff was already legally bound to render the defendant periodical inspection and minor adjustment services, under the contracts of March 28, 1929, it cannot recover for such services.”

to which instruction, plaintiff excepted as follows:

“We take an exception to instruction No. 2  
\* \* \*. We take an exception to that part of the

Court's instructions commencing with line 20 on page 13 (Par. 8) \* \* \*."

3.

The Court erred in refusing to give plaintiff's requested instruction No. 2, as follows:

"You are instructed that the plaintiff claims that the amount to be paid for inspection and minor adjustment services was left in blank in paragraph six of each of the contracts of March 28th, 1929, plaintiff's exhibits Nos. 1 and 3, because the amount thereof could not be determined at the time that those two contracts were made and that it was understood between plaintiff and defendant that the amount of that weekly charge should be fixed at a later date.

"In this connection I instruct you, even though the amount of the weekly charge for inspection and minor adjustment services was left in blank in those original contracts, that does not mean that those services were to be rendered by plaintiff free; but the amount thereof to be paid by defendant may be shown by other evidence to have been agreed upon by the parties. The plaintiff alleges that the amount to be paid for such services was agreed upon between it and the defendant and that it was to be \$29.75 per week for each theatre and plaintiff further alleges that this agreement was expressed in the supplemental contracts of Sep-



tember 4th, 1929, plaintiff's exhibits Nos. 2 and 4."

to which refusal plaintiff duly excepted.

4.

The Court erred in instructing the jury as follows (Court's instruction No. 3, paragraph 4, commencing line 21, page 15) :

"In this connection I instruct you that under the original agreement of March 28th, 1929, no agent or employee of the plaintiff is authorized to alter or modify those agreements or either of them in any way, unless such alteration or modification shall be approved in writing by the president or vice-president of the plaintiff corporation, or by such representative as may from time to [93] time be designated in writing by either of such officers; and I instruct you further that there is no evidence that these alleged contracts were approved by either of such officers. There is before you, however, evidence to the effect that 'Anderson' had authority to effect certain contracts for and on behalf of plaintiff, and that said contracts were later ratified and confirmed by the plaintiff by its Board of Directors. I therefore instruct you that these alleged agreements of September 4th, 1929, have no binding force or effect unless they were executed and approved in accordance with said provisions of the original contracts, unless you find the par-

ties afterwards voluntarily ratified these agreements.”

to which instruction, plaintiff excepted as follows:

“We except to that part of the court’s instruction No. 3, commencing on line 21, page 15 down to the remainder of that particular instruction 3, on the ground it does not state the true principle of law applicable to written instruments or contracts particularly, and that neither party is bound by the particular provision that only a president or vice-president could change these contracts if they afterwards agree to change them otherwise.”

5.

The Court erred in refusing to give plaintiff’s requested instruction No. 3, as follows:

“The defendant claims that under the original contracts of March 28th, 1929, plaintiff’s exhibits Nos. 1 and 3, no agent or employee of the plaintiff corporation is authorized to alter or modify these contracts, or either of them, in any way unless such alteration or modification shall be approved by the president or a vice president of the plaintiff corporation or by such representative as may from time to time be designated in writing by either of such officers.

“You are instructed that the plaintiff has submitted evidence tending to show that R. E. Anderson did have authority from the plaintiff

corporation to execute the supplemental contracts of September 4th, 1929, plaintiff's exhibits Nos. 2 and 4, for and on its behalf and that his action in making these supplemental contracts was authorized and approved by the plaintiff corporation through its board of directors, and if you believe this evidence to be true then the requirements of the original contracts relative to altering or modifying them, have been complied with."

to which refusal plaintiff duly excepted.

6.

The Court erred in overruling the plaintiff's demurrer to the second and fourth counterclaims for failure to state facts sufficient to constitute a counterclaim to the amended complaint herein.

7.

The Court erred in denying plaintiff's motion to strike [94] out section D of paragraph 3 of the First and Fourth affirmative defenses in Defendant's Amended Answer, as Amended, upon the ground that the allegations of said section were irrelevant, incompetent and immaterial, to which ruling plaintiff duly excepted.

8.

The court erred in refusing to give plaintiff's requested instruction No. 13, as follows:

"You are instructed that under Section 8 of each of the contracts of March 28, 1929, plain-

tiff's exhibits Nos. 1 and 3, the defendant agreed to pay to plaintiff its list installation charges as from time to time established for any additional equipment and spare or renewal parts, furnished or supplied by plaintiff, upon delivery thereof and to pay the transportation charges thereon.

"You are instructed that the evidence in this case shows that the plaintiff pursuant to that section of those contracts furnished and supplied defendant at his Juneau theatre with the additional equipment and spare or renewal parts described in the first cause of action in plaintiff's amended complaint herein and that there was due and unpaid thereon at the time of the commencement of this suit a balance of \$29.09, and furnished and supplied to defendant at his Ketchikan theatre additional equipment and spare or renewal parts described in the second cause of action mentioned in plaintiff's amended complaint herein and that there was due and unpaid thereon at the time of the commencement of this suit a balance of \$61.92, and that no evidence has been offered by defendant tending to show that those amounts were paid by him to plaintiff at the time of the commencement of this action or since whereas plaintiff offered evidence that said amounts had not been paid and that the same were due at the time of the commencement of this action."

to which refusal plaintiff duly excepted.

9.

The Court erred in instructing the jury as follows (Court's instructions Nos. 8 and 10, paragraphs 2, 3, 7 and 9, which instructions were identical except No. 8 referred to the Juneau Theatre and first counterclaim and No. 10 to the Ketchikan Theatre and third counterclaim):

“\* \* \* in this connection I instruct you that it is admitted by the plaintiff that the rental value of the equipment so taken out is \$1,050.00 per year (for each theatre) and that the amount to be fixed by you, if you find the defendant entitled to recover for such rental value, cannot be less than \$8,458.30 (for each theatre), together with 8% interest thereon from and after the date that such equipment was removed; and [95] that the amount to be allowed by you on this item cannot be more than \$9,627.03 (for each theatre). (Paragraph 2, pages 24, 25)

\* \* \* \* \*

“I further instruct you that if you find that the defendant is entitled to recover on his first (and third) Counter Claims (s) to the first (and second) Cause(s) of Action, he may recover, in addition to the rental value of the equipment as above referred to, the profits, if any, lost by him from the operation of his Juneau (and Ketchikan) Coliseum theatre(s) because of the removal of said equipment; (Paragraph 3, page 25)

\* \* \* \* \*

“I further instruct you that the total amount of anticipated profits that can be recovered by the defendant under the first (and third) counterclaims to the first (and second) Cause(s) of action cannot be more than \$44,000.00 (under each counterclaim); that being the amount fixed by the pleadings of the defendant. (Paragraph 7, page 26)

\* \* \* \* \*

“He (defendant) claims to have installed new equipment for the purpose of reducing the damages that would otherwise result from the removal of the equipment. If you find that he is entitled to recover because of the removal of such equipment in the Coliseum theatre(s) at Juneau (and Ketchikan) under these instructions, then you may allow him whatever money you may find he has actually paid out in connection with the purchase and installation of such new equipment; provided, that such monies were paid out in a reasonable and prudent attempt, made in good faith to diminish such damages as under these instructions are held to be recoverable; and he is entitled to recover such monies even though the installation of such new machinery or equipment did not result in reducing such damages; provided, that the defendant acted in good faith and for the purposes above stated.” (Paragraph 9, page 27)

to which instructions, the plaintiff excepted as follows:

“Also take exception to instruction number 8, your Honor, particularly upon the ground we claim that is not a statement of the true measure of damages and no profits can be recoverable in this case in any event, and furthermore, that the defendant can not recover in this action upon his counterclaims in any event, and further, that portion concerning the purchase of new equipment, found on page 27, (last Par.) of that particular instruction, which we contend is not an element of damages in this case. \* \* \* The same exception to instruction 10 as we took to instruction No. 8.”

## 10.

The Court erred in refusing to give plaintiff's requested instruction No. 18B, as follows:

“You are instructed that you cannot consider, in ascertaining the amount of such net useable value, any good will or alleged loss thereof because I have here- [96] tofore stricken from this case all matters dealing with the question of good will and loss thereof, and, further, you cannot consider any alleged loss of profits in arriving at the amount of the net useable value of said equipments during said periods because the defendant has failed to prove with definiteness and certainty that he lost any profits at either of his said theatres.”

to which refusal plaintiff duly excepted.

## 11.

The Court erred in refusing to give plaintiff's requested instruction No. 22, as follows:

“You are further instructed that you cannot allow defendant any damages on account of the purchase or cost of installation of new equipments in either of his said theatres because that is not an element of the true measure of damages in this case.”

to which refusal plaintiff duly excepted.

## 12.

The Court erred in admitting in evidence, over the objection and exception of the plaintiff, certain testimony of defendant, W. D. Gross, the full substance of which is as follows:

“Q. What did you do in the way of trying to remedy the sound and make it better?

A. Tried some other equipment; we borrowed some better equipment—after—and couldn't do it any good.

Q. What effect did that have on your business?

Mr. ROBERTSON: Objection as incompetent, irrelevant and immaterial.

The COURT: Overruled. I think the question is competent; he may answer.

Mr. ROBERTSON: Exception.

Q. Now, Mr. Gross, what effect, if any, did the fact that you had inferior equipment in



your theatre have upon the business of the theatre?

Mr. ROBERTSON: May I ask that my objection be considered as going to all this line of testimony?

The COURT: Very well.

A. Lost business. It began to go down, lost business. [97]

\* \* \* \* \*

Q. What was the effect upon the profits that you realized from your theatre?

A. I considered from about two to three thousand dollars a month in Juneau and the same in Ketchikan.

Q. You lost that much?

A. Yes.

\* \* \* \* \*

Q. How much did you lose in profits by reason of the removal of that equipment at Ketchikan, roughly speaking?

A. From two to three thousand dollars a month in each of them."

13.

The court erred in refusing to receive in evidence plaintiff's exhibits for identifications Nos. 43, 44 and 53, the substance of which is as follows:

Plaintiff's Exhibit 43 for identification is upon printed "Form 1040—Treasury Department—Internal Revenue Service" and is headed: "Individual Income Tax Return—For net incomes from salaries or wages of more than \$5,000 and incomes from busi-

ness, profession, rents, or sale of property for calendar year 1929, W. D. Gross, Juneau, Alaska, Occupation Motion Picture.”

“See Statement Attached Hereto”

### INCOME

Receipts—	At Juneau	At Ketchikan
Total Theatre Receipts for year	\$ 52,478.55	\$ 58,222.74
Total Rent from Apts & Stores	6,852.85	630.00
	\$ 59,331.40	\$ 58,582.74
Total Rent from Seattle, Property		\$8500.00
Grand total of all income		\$126,414.14
Forwarded,		

[98]

Expenses—	Deductions	At Juneau	At Ketchikan
Wages, Paid		\$ 12,382.56	\$ 8,152.00
Films, cost		11,912.27	33,981.76
Freight, Paid		1,052.62	482.40
Lights, Elec., Etc.		3,716.02	1,425.19
Fuel & Fuel Oil		1,100.27	376.68
Advertising Newspapers Etc.		1,053.85	1,113.69
Repairs and replacements		1,742.83	5,096.10
Premiums on Fire Ins. & Insurance		1,759.81	712.50
Taxes, Municipal, Terr. & Federal		7,729.30	742.05
Interest on Borrowed Money		3,215.80	
Traveling Expenses		2,071.93	25.00
Gen'l Expense, all others		3,723.89	25.00
Loss, Bad Accounts		980.56	
Charity		104.00	15.00
		\$ 52,545.71	\$ 52,120.37
Total Expense		\$ 52,545.71	\$ 52,120.37
Net Operating Profit at Juneau		6,785.69	
Net Operating Profit at Ketchikan			6,462.37
Net Income from Seattle, Property			8500.00
Total Net Operating Profit at Juneau, Ketchikan and Seattle			\$ 21,748.06

Depreciation at Juneau	Acquired	Cost	Previous Years	Depreciation Charged Off	This Year
Gross Apts.	1929	\$15,000.00		5%	\$ 750.00
Wooden Bldg.	1921	40,000.00	\$12,000.00	5%	2,000.00
Furn. and Fix.	1926	30,000.00	9,000.00	10%	3,000.00
Machinery	1921	5,000.00	3,000.00	10%	500.00
Totals		\$90,000.00	\$24,000.00		\$6,250.00
<u>At Seattle</u>					
Building and Lot	1928	\$125,000.00	—	2½%	\$3,125.00
<u>At Ketchikan</u>					
Wooden Bldg.	1922	60,000.00	15,000.00	5%	3,000.00
Furn. and Fix.	1922	30,000.00	15,000.00	10%	3,000.00
Machinery	1922	5,000.00	2,500.00	10%	500.00
Totals		95,000.00	32,500.00		6,500.00

## Recapitulation:

Net profit at Juneau	\$ 6,785.69
Net profit at Ketchikan	6,462.37
Net rents Seattle, property	8,500.00

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Total

\$21,748.06

## Depreciation

At Juneau	\$ 6,250.00
At Ketchikan	6,500.00
At Seattle	3,125.00

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Total

\$ 15,875.00

15,875.00

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Net profit over and above expenses

and repairs and depreciation:

5,873.06

There are no other receipts, income, expenses, repairs and depreciation other than shown hereinabove.

[99]

## "Earned Income Credit

"21. Earned Income (not over \$30,000)	\$ 5,873.06
"22. Less Personal Exemption and Credit for Dependents	3,900.00
	<hr/>
"23. Balance (Item 21 minus 22)	\$ 1,973.06
"27. Normal Tax (1½% of Item 24)	\$ 9.87"

Attached to the foregoing copy of Defendant's Income Tax Return and produced by him with it are the following papers, viz.:

Letter from Internal Revenue Service to Gross dated Feb. 3, 1932, re procedure for taking appeal;

Printed form of letter from David Burnet, Commissioner of Internal Revenue to Gross, dated Feb. 3, 1932, advising that the determination of defendant's tax liability for 1929 disclosed a deficiency of \$855.61 "as shown in the attached statement";

Typewritten statement headed "In re: Mr. W. D. Gross, Juneau, Alaska. Tax Liability. Year 1929. Tax Liability \$865.48. Tax Assessed \$9.87. Deficiency \$855.61."

Printed form 870, Treasury Department, (in duplicate) headed: "In re Mr. W. D. Gross, Juneau, Alaska. Waiver of Restrictions on Assessment and Collection of Deficiency in Tax," which is unsigned.

Printed Notice re Appeals should be addressed to United States Board of Tax Appeals.

Printed Notice, Form 882, Treasury Department, re payment.

Copy of unsigned letter dated September 3, 1932, from Defendant to Collector of Internal Revenue, Tacoma, Wash., reading:

September 3, 1932.

Collector of Internal Revenue,  
Tacoma, Wash.

Dear Sir:

Mr. Fear, your agent was in my office and ask for payment of tax due in 1929.

We admit this tax of 1929 and for which we are sorry that payment has been delayed because of poor business and investments in the small towns of S. E. Alaska. [100]

We owe considerable money on conditional sales contracts and the people that hold these contracts are threaten to replevin the material if the contracts were not taken care of. This forced us to take care of this indebtedness so that we could keep our doors open.

We also had contract obligation for films that was running from 40% to 50% of our proceeds, which we could not get out of at the time being, but at present we have succeeded in reducing this film rental this year.

So therefore we are giving Mr. Fear a check for \$100.00 for this month and we will try to pay this amount each month on this past due taxes. I will also try to enlarge these payments as soon as I am able to pay off what indebtedness is now outstanding and the conditional sales contract payments have been taken care of for which they are now forcing me to keep up.

Hoping that this meets with your approval and thanking you for your past co-operation I remain,

Very truly yours,

WDG/e

Printed Notice, reading: "Notice. This is a copy of the report of the examiner of your income tax return. It is an important document and should be carefully preserved," to which is attached a printed form of letter, Form 850, dated Seattle, Wash., December 19, 1931, addressed to defendant, headed: "In re Income Tax. Date of report: Dec. 17, 1931. Recommendation: Year 1930 Additional Tax \$178.44. Total \$178.44," signed by "Geo. C. Earley, Internal Revenue Agent in Charge," to which letter are attached 5 typewritten sheets containing

detailed statements of adjustments in defendant's income tax return, followed by a printed form, reading: "Name W. D. Gross. Statement of Total Tax Liability. Year 1929: Tax previously assessed \$9.87. Adjustments proposed in accompanying report, Deficiency \$855.61. Correct Tax Liability \$865.48," followed by a letter dated Dec. 26, 1931, from defendant reading: [101]

December 26, 1931

Mr. Geo. C. Earley  
Internal Revenue Agent in Charge  
Seattle, Wash.

Dear Sir:

I received your income tax report written December 19, 1931, a complaint formally made out by your special agent that was in Alaska, Mr. John H. Clauson. According to Mr. Clauson's statements, however, some of the items that were in the books are not correct.

After receiving your information, I immediately started to investigate regarding your complaint.

I found that our new bookkeeper in making out the income tax reports for the years of 1929 and 1930 have not been attend to proper expenditures on our ledgers, so therefore, we ask for an extension of this claim as I am getting a capable auditor to investigate our books and revise our taxes of 1929 and 1930.

Please send me a new tax sheet for 1929 and 1930 and will be more than much oblige to you.

Thanking you for your information, also please find signed statement.

Yours sincerely

WDG.P

W. D. GROSS

followed by a letter dated January 4, 1932, to Gross from "Geo. C. Earley, Internal Revenue Agent in Charge," acknowledging receipt of defendant's letter of December 26, 1931; followed by a mimeographed form headed "Instructions as to the Preparation of Protests against findings of Revenue Agent's Reports."

Plaintiff's Exhibit 44 for Identification is upon a printed "Form 1040 Treasury Department—Internal Revenue Service" and headed: "Individual Income Tax Return for Net Incomes From Salaries or Wages of More than \$5,000 and Incomes for Business, Profession, Rents, or Sale of Property for Calendar Year 1930 W. D. Gross, Gold Belt Avenue, Juneau, Alaska. Occupation: Theatre owner and operator." [102]



“Item and Instruction No.	
“ 2. Income from Business or Profession	\$ 9,768.56
“12. Total income in Lines 1 to 11	\$ 9,768.56
“20. Net Income (Item 12 minus item 19)	\$ 9,768.56
“Earned Income Credit	
“21. Earned Income (not over \$30,000)	\$ 5,000.00
“22. Less personal exemption and credit for dependents	\$ 3,900.00
“23. Balance (item 21 minus 22)	\$ 1,100.00
“24. Amount taxable at 1½%	\$ 1,100.00
“27. Normal Tax (1½% of Item 24)	\$ 1,650.00
“31. Tax on Earned Net Income (total of items 27 to 30)	\$ 1,650.00
“32. Credit of 25% of Tax (not over 25% of Items 30, 44, 45 and 46)	\$ 4.12
Computation of Tax	
“33. Net Income (item 20 above)	\$ 9,768.56
“36. Credit for Dependents	\$ 400.00
“37. Personal exemption	3,500.00
“38. Total of Items 34 to 37	\$ 3,900.00
“39. Balance (Item 33 minus 38)	\$ 5,868.56
“40. Amount taxable at 1½% (not over \$4,000.00)	\$ 4,000.00

“41.	Balance (Item 39 minus 40)	\$	1,868.56
“44.	Normal tax (1½% of Item 40)	\$	60.00
“45.	Normal Tax (3% of Item 42)	\$	56.06
“48.	Tax on Net Income (total of items 44 to 47)	\$	116.06
“51.	Less Credit of 25% of Tax on earned income (Item 32)	\$	4.12
“52.	Total of Tax (Item 50 minus 51)	\$	111.94
“55.	Balance of Tax (Item 52 minus Items 53 and 54)	\$	111.94”

To the Printed Form 1040 is pasted the following typewritten statement, viz.:

## INCOME

Receipts—	At Ketchikan	At Wrangel	At Petersburg	At Douglas	At Juneau
Total Theatre Receipts for Year	\$52775.20	\$14790.56	\$15897.35	\$ 3338.05	\$53798.14
Total Rents from Apt. & Stores	360.00				9390.00
Other Incomes Slides & Etc.	800.00				
Grand Total of All Income	\$53935.20	\$14790.56	\$15897.35	\$ 3338.05	\$63188.14

At Haines	Sitka	Alaska Film Exchange	Seattle
\$ 4752.75	\$ 6464.26 90.00	\$60,554.50	\$ 8500.00
\$ 4752.75	\$ 6554.26	\$60,554.50	\$ 8500.00
Grand Total of All Income			\$170,956.31

[103]

DEDUCTIONS

	At Ketchikan	At Wrangel	At Petersburg	At Douglas	At Juneau
Wages	\$ 7515.50	\$ 2732.50	\$ 5196.57	\$ 1272.40	\$13607.55
Alaska Film Exchange	35500.00	5500.00	6328.55	1373.65	12102.30
Film Cost					
Freight	203.77	74.34	300.25	80.60	1031.52
Light, Elec. Etc.	1085.05	427.03	531.43	82.30	2711.75
Fuel, Fuel Oil	456.71	177.01	221.72	53.00	1867.97
Advertising					
Newspaper Etc.	1236.40	150.40	542.35	84.05	1410.11
Repairs & Replacements	750.00		241.48	151.15	9410.50
Premiums on Fire Ins. & Ins.	437.50				1357.00
Taxes, Municipal					
Terr. & Federal	416.50	360.00	70.00	50.00	1501.12
Interest on Borrowed Money	375.65				3708.43
Traveling Exp.					1625.05
Gen'l Expense	200.00	218.36	322.42	35.75	1969.72
Rents Paid on Bldgs. & Equip.	4118.12		1650.00	245.00	2595.73
Loss, Bad Accounts					
Charity			42.00		127.00
Net Operating Profit at	\$ 1640.00	\$ 5150.92	\$ 450.48	\$ 94.75	\$ 8162.39
				Loss	

	At Haines	Sitka	Alaska Film Exchange	Seattle
Wages	\$ 1742.45	\$ 1500.00	\$ 25.00	
Alaska Film Ex.	2450.00	2800.00		
Film Cost			43094.18	
Freight	54.43	102.00	122.81	
Light, Elec. Etc.	45.00	191.71		
Fuel, Fuel Oil		131.02		
Advertising			14.60	
Newspaper Etc.				
Repairs & Replacements				
Premiums on Fire Ins. & Ins.			213.00	
Taxes, Municipal Terr. & Federal			3650.54	
Interest on Borrowed Moneys			100.00	\$ 2575.50
Traveling Exp.			182.00	
Gen'l Expense	50.84			
Rents Paid On Bldg. & Equip.			1883.91	
Loss, Bad Accts. Charity			123.00	
Net Operating Profit at	\$ 410.03	\$ 1829.53	\$11145.46	\$ 5924.50
Total Net Operating Profit in all Places				\$34,618.66

vs. W. D. Gross

## DEDUCTIONS OF DEPRECIATION

Depreciation at Juneau.	Acquired	Cost	Depreciation Charged of Previous Years	This Year
Gross Apt.	1929	\$15000.00	\$ 750.00	\$ 750.00
Wooden Bldg.	1921	40000.00	14000.00	2000.00
Furniture & Fixtures	1926	30000.00	12000.00	3000.00
Machinery	1921	5000.00	3500.00	500.00
Totals		\$90000.00	\$30250.00	\$ 6250.00
At Ketchikan				
Wooden Bldg.	1924	\$60000.00	\$18000.00	\$ 3000.00
Furniture & Fixtures	1924	30000.00	18000.00	3000.00
Machinery	1924	5000.00	3000.00	500.00
Totals		\$95000.00	\$39000.00	\$6500.00
At Seattle				
Building and Lot	1928	\$125000.00	\$ 3125.00	\$ 6250.00
Totals		\$125000.00	\$ 3125.00	\$6250.00
At Douglas				
Machinery	1930	\$ 5000.00	—	\$ 500.00

## DEDUCTIONS OF DEPRECIATION (contd.)

	Acquired	Cost	Depreciation Charged of Previous Years	This Year
At Petersburg				
Machinery	1930	\$ 5000.00	—	\$ 500.00
At Wrangel				
Wooden Bldg.	1930	\$20000.00	—	\$ 1000.00
Furniture and Mach. Fix.	1930	9000.00	—	900.00
Totals		<u>\$29000.00</u>		<u>\$ 1900.00</u>
At Haines				
Wooden Bldg.	1930	\$ 5000.00	—	\$ 250.00
Furniture & Mach. Fix.	1930	7000.00	—	700.00
Totals		<u>\$12000.00</u>		<u>\$ 950.00</u>
At Sitka				
Wooden Bldg. & Iron	1930	\$18000.00	—	\$ 900.00
Furniture Fix. & Equip.	1930	11000.00	—	1100.00
Totals		<u>\$29000.00</u>		<u>\$ 2000.00</u>

## RECAPITULATION:

Net Profit at Ketchikan	\$ 1640.00
Net Profit at Wrangel	5150.92
Net Profit at Petersburg	450.48
Net Loss at Douglas	94.75
Net Profit at Juneau	8162.39
Net Profit at Haines	410.03
Net Profit at Sitka	1829.53
Net Profit at Alaska Film Exchange	11145.46
Net Profit at Seattle	5924.50
	<hr/>
Total	\$34618.56

## DEPRECIATION:

At Juneau	\$ 6250.00	
At Ketchikan	6500.00	
At Seattle	6250.00	
At Douglas	500.00	
At Petersburg	500.00	
At Wrangel	1900.00	
At Haines	950.00	
At Sitka	2000.00	
	<hr/>	
Total	\$24850.00	24850.00
		<hr/>

Net Profit over and above  
Expenses and Repairs,  
Depreciation, Etc. \$ 9768.56

There are no other receipts, income, expenses, repairs, and depreciation other than shown hereinabove.

Fastened to the foregoing copy of Defendant's Income Tax Return, and produced by him with it were the following papers, viz.:

“Notice: This is a copy of the Report of the Examiner of your Income Tax Return. It is an important document and should be carefully pre-

served," and a letter upon the stationery of the Treasury Department, Internal Revenue Service, dated 528 Republic Building, Seattle, Washington, July 8, 1932, addressed to W. D. Gross, Juneau, Alaska, headed "In re: Income tax. Date of Report: June 21, 1932. Years Examined: 1930," and stating in substance that "enclosed is a copy of the report covering examination recently made by a representative of this office concerning your income tax liability which is furnished for your information and files," and that no remittance should be made until notice of [106] assessment, and requesting acknowledgment, and signed by "Geo. C. Earley, Internal Revenue Agent in Charge," to which letter are attached 36 sheets of typewritten matter, giving a detailed statement of the Internal Revenue Bureau's adjustment of the defendant's Income Tax Return, and concluding with a printed form reading: "W. D. Gross, Statement of Total Tax Liability. Year 1930. Tax Previously assessed \$111.94. Adjustments proposed in accompanying report: Deficiency, \$2,056.09. Correct Tax Liability \$2,168.03."

Plaintiff's Exhibit 53 for identification is upon printed form of the Treasury Department, Internal Revenue Service, and is headed: "Individual Income Tax Return—For Net Incomes from Salaries or Wages of More Than \$5,000 and Incomes from Business, Profession, Rents, or Sale of Property—For Calendar Year 1932—W. D. Gross & Wife,



Juneau, Alaska—Occupation, Business, or Profession Theatre Business.”

“Item and  
Instruction

No.

“ 2. Income from Business or Profession	\$42,364.94
“18. Other Deductions not Reported Above	36,987.91
“19. Total Deductions in Items 13 to 18 (Depreciation)	22,440.68
“21. Less: Net loss for 1931	17,063.65”

Upon the face of the printed form is written in typewriting “(Note Attach Statement)”. Attached to the printed form are the following typewritten statements, including the hereinafter quoted printed form of letter from “Geo. C. Earley, Internal Revenue Agent in Charge” to “W. D. Gross and Wife”, namely:

“This office is recommending to the Commissioner of Internal Revenue that your income tax returns for the year or years indicated be accepted as correct.

“I am sure you will appreciate that this action is subject to approval in Washington, and also that should subsequent information be received which would materially change the

amount reported, the Bureau is obliged under existing laws to redetermine your tax liability.”

which letter is dated Seattle, Washington, July 26, 1933, and is headed: “In re Income Tax—Years Covered: 1932.” [107]

## INCOME TAX REPORT FOR THE YEAR 1932

Summary of Business Done By W. D. Gross Including Theatre Receipts, Profits, Expenses, etc. and Depreciation for the Year 1932.

### B-B-B

Total Profit Before Deductions	\$42,364.94
--------------------------------	-------------

### A-A-A

Film Rentals, Repairs, Replacements, Freight, Advertising paid by Alaska Film Exchange	\$36,987.91
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Net Profit Before Deducting Depreciation	\$5,377.03
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### C-C-C

Depreciation for Year 1932—	\$22,440.68
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Net Loss 1932—	\$17,063.65
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Total Profit (loss) From All Theatres, Rents, etc. Before Deducting Film Rental, Depreciation and etc.

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	<i>Profit</i>	<i>Loss</i>
A-A Douglas	\$ 1757.94	
A-B—Haines Coliseum		\$205.21
Haines Light Plant	434.20	
A-C Juneau Coliseum	5864.28	
Rentals	12063.50	
A-D—Ketchikan Coliseum	8160.74	
A-E—Petersburg Coliseum	2994.94	
Rentals	1038.91	
A-F Sitka Coliseum	4572.38	
A-G—Wrangel Coliseum	4626.29	
A-H—Seattle, Rentals	1056.97	
	<hr/>	<hr/>
Totals	\$42570.15	\$205.21
Net Total Before Deductions	\$42364.94	

A-A-A

1932—

Alaska Film Exchange  
Juneau, Alaska

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Total Cost of Films

    Paid for by Alaska Film Exchange     \$28132.69

Total Cost of Film

    Paid for by Coliseum Theatre  
    Ketchikan, Alaska                     4783.33

Total Cost of Film

    Paid for by Coliseum Theatre  
    Juneau, Alaska                         2265.54

Repairs, Replacements, Freight

    Advertising Paid for by  
    Alaska Film Exchange                 1806.35

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Total Film Cost Plus  
    Repairs and etc.

\$36987.91

## C-C-C

## DEPRECIATION 1932—

From All Sources

		Reserve Claimed 12/31/31	Depreciation Claimed 12/31/32	Reserve 12/31/32
A-C-1	Juneau, Alaska	3719.84	1484.92	5204.76
A-C-2		2837.69	1174.22	4011.91
A-C-3		7800.00	650.00	8450.00
A-C-4		3200.00	400.00	3600.00
A-C-5		13800.00	1150.00	14950.00
		6800.00	850.00	7650.00
A-C-6		14700.00	2100.00	16800.00
A-C-7		3900.00	1300.00	5200.00
A-C-8		2291.68	—	2291.68
A-C-9		200.00	300.00	500.00
A-C-10		50.00	200.00	250.00
A-D-1	Ketchikan, Alaska	21453.08	1726.54	23179.62
A-D-2		10060.29	1117.78	11178.07
A-D-3		12721.13	7.98	12729.11
A-D-4		5000.00	—	5000.00
A-D-5		2291.68	—	2291.68
A-D-6		200.00	300.00	500.00

## A-C

## COLISEUM THEATRE

Juneau, Alaska

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1932		
Receipts		\$27379.46
Expenses (without films)		
Salaries, Wages	\$ 5490.82	
Advertising (Newspaper & Etc.)	1878.05	
Fuel, Oil	2509.01	
Lights (Elec.)	2090.14	
Freight	766.55	
Interest	2965.50	
Gen'l Expense	1378.70	
Repairs	2815.21	
Insurance	379.95	
Taxes (City)	794.00	
Travel	447.25	
	<hr/>	
Total Expense Without		
Deducting Film Rental	\$21515.18	\$21515.18
		<hr/>
Total Profit Before		
Film Deductions		\$ 5864.28
		<hr/>
1932		
Juneau Rents Collected**	\$12063.50	
	<hr/>	
Total Profit from Rental		\$12063.50

A-D  
COLISEUM THEATRE  
Ketchikan, Alaska

1932			
Receipts			\$14920.49
Expenses (without films)			
Wages, Salary	\$ 3222.00		
Freight	253.22		
Oil, Fuel	516.70		
Light (Elec.)	946.92		
Gen'l Expense	306.46		
Advertising	1198.29		
Interest	229.60		
Insurance	86.55		
Total Expense Without			
Deducting Film Rentals	\$ 6759.75		\$ 6759.75
Total Profits Before Film			
Deductions			\$ 8160.74
			[110]

A-C-  
JUNEAU, ALASKA  
DEPRECIATION 1932

	Value	Acquired	Rate	Reserve Claimed 12/31/31	Depre. Claimed 12/31/32	Reserve 12/31/32
A-C-1						
Gross Apt.	\$29698.35	1929	5%	\$ 3719.84	\$ 1484.92	\$ 5204.76
Land	\$2000.00					
A-C-2						
Furniture	\$ 5870.93	1929	20%	\$ 2837.69	\$ 1174.22	\$ 4011.91
A-C-3						
Grand Bldg.	\$13000.00	1920	5%	\$ 7800.00	\$ 650.00	\$ 8450.00
Land	\$5000.00					
A-C-4						
Forest Bldg.	\$ 8000.00	1924	5%	\$ 3200.00	\$ 400.00	\$ 3600.00
Land	\$6000.00					
A-C-5						
Coliseum	\$23000.00	1921	5%	\$13800.00	\$ 1150.00	\$14950.00
Land	\$5000.00					
	\$40000.00	1924	5%	\$ 6800.00	\$ 850.00	\$ 7650.00
Addition Reductions				\$17000.00		

	Value	Acquired	Rate	Reserve Claimed 12/31/31	Depre. Claimed 12/31/32	Reserve 12/31/32
A-C-6						
Furniture						
Fixtures	\$21000.00	1925	10%	\$14700.00	\$ 2100.00	\$16800.00
A-C-7						
Organ	\$13000.00	1929	10%	\$ 3900.00	\$ 1300.00	\$ 5200.00
A-C-8						
Sound						
Equipment	\$11000.00	1929	10%	\$ 2291.68	—	2291.68
Carried as Assets until Court Decides Note St. 12/31/31-A-C-8						
A-C-9						
Sound						
Equipment	\$ 3000.00	1931	10%	\$ 200.00	\$ 300.00	\$ 500.00
A-C-10						
Valanetine						
Property	\$ 4000.00	1931	5%	\$ 50.00	\$ 200.00	\$ 250.00
Land	\$4000.00					

[111]

A-D  
KETCHIKAN, ALASKA  
DEPRECIATION 1932

A-D-1						
Coliseum	\$34530.79	1923	5%	\$21453.08	\$ 1726.54	\$23179.62
Land	\$8000.00					
A-D-2						
Kimbal Organ	\$11178.07	1923	10%	\$10060.29	\$ 1117.78	\$11178.07
A-D-3						
Furniture &						
Fixtures	\$12729.01	1923	10%	\$12721.13	\$ 7.98	\$12729.01
A-D-4						
Machinery	\$ 5000.00	1922	10%	\$ 5000.00	\$ —	\$ 5000.00
A-D-5						
Sound Equip-						
ment W E	\$11000.00	1929	10%	\$ 2291.68	\$ —	\$ 2291.68
Note Carried as Assets Until Court Decides Statement 12/31/31 A-D-5						
A-D-6						
Sound						
Equipment	\$ 3000.00	1931	10%	\$ 200.00	\$ 300.00	\$ 500.00

\* \* \* \* \*

to the refusal of which exhibits in evidence plaintiff duly excepted.

Wherefore plaintiff prays that the judgment above referred to may be reversed.

HENRY RODEN

R. E. ROBERTSON

Of Attorneys for Plaintiff

Copy of foregoing assignment of errors received this June 5, 1935.

J. A. HELLENTHAL

Of Attorneys for Defendant.

[Endorsed]: Filed in the District Court, Territory of Alaska, First Division. Jun. 12, 1935. Robert E. Coughlin, Clerk, by J. W. Leivers, Deputy. [112]

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[Title of Court and Cause.]

PETITION FOR APPEAL.

Comes now ELECTRICAL RESEARCH PRODUCTS, INC., a corporation, the above-named plaintiff, and complains that in the records and proceedings had in this Court in this cause, and also in the rendition of the judgment herein against it on March 16, 1935, in the principal sum of \$58,436.33, and for the further sum of \$7,500.00 as attorney's fees, together with interest thereon and costs, manifest error has happened to its great damage as will more fully appear from the assignments of error filed herewith, and respectfully appeals to



the United States Circuit Court of Appeals for the Ninth Circuit for such further orders and processes as may cause the said errors to be corrected, and respectfully prays that this, its appeal, may be allowed and that a citation may issue upon said appeal and that a transcript of the record herein may be sent to the said Honorable Circuit Court of Appeals and that an order may be entered herein fixing the amount of the bond, as a cost and supersedeas bond, to be given by it and that these proceedings may be stayed pending said appeal; and your petitioner will ever pray.

HENRY RODEN,  
R. E. ROBERTSON,

Attorneys for Plaintiff Petitioner.

[Endorsed]: Service of copy of the foregoing petition admitted this June 5, 1935.

J. A. HELLENTHAL,  
Of Attorneys for Defendant. [113]

#### ORDER ALLOWING APPEAL.

The foregoing petition, on this day, coming regularly on for hearing, **IT IS HEREBY ORDERED** that said appeal be and the same is hereby allowed, and that citation may issue upon said appeal for the transcript of the records to be sent to the United States Circuit Court of Appeals for the Ninth Circuit; that the bond to be given by the plaintiff petitioner as a cost and supersedeas bond is hereby fixed

at \$75,000.00, and that, upon the giving of said bond, execution and further proceedings be stayed herein.

Done in open court this 12 day of June, 1935.

GEO. F. ALEXANDER,

District Judge.

[Endorsed]: Filed Jun. 12, 1935. [114]

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[Title of Court and Cause.]

BOND ON APPEAL.

KNOW ALL MEN BY THESE PRESENTS:

That we, ELECTRICAL RESEARCH PRODUCTS, INC., a corporation, as principal, and UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation, as surety, hereby acknowledge ourselves to be indebted and firmly bound to pay to W. D. Gross the sum of Seventy-five Thousand (\$75,000.00) Dollars, in good and lawful money of the United States, for the payment of which sum, well and truly to be made, we hereby bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 5th day of June, 1935.

The condition of this obligation is such that whereas the above bounden Electrical Research Products, Inc., a corporation, has appealed to the United States Circuit Court of Appeals for the

Ninth Circuit from that certain judgment rendered, made and entered in this cause on March 16, 1935, wherein and whereby it is ordered, adjudged and decreed that W. D. Gross, the above named defendant, have and recover from Electrical Research Products, Inc., a corporation, the above named plaintiff, the principal sum of \$58,436.33, and the further sum of \$7,500.00 as attorney's fees, together with interest and costs.

NOW, THEREFORE, if the said Electrical Research Products, Inc., a corporation, shall prosecute its said appeal to effect and shall answer for and pay all such damages and costs as may be [115] awarded against it, if it fails to make its plea good, then this obligation shall be null and void; otherwise, to remain in full force and effect.

ELECTRICAL RESEARCH

PRODUCTS, INC.,

a corporation,

By R. E. Robertson,

Its Attorney,

Principal.

UNITED STATES FIDELITY AND  
GUARANTY COMPANY,

a corporation,

By R. E. Robertson,

Its Attorney-in-fact and Agent.

Surety.

United States of America,  
Territory of Alaska—ss.

Acknowledged before me this 5th day of June,  
1935.

M. E. MONAGLE,  
Notary Public for Alaska. My commission expires  
March 1, 1938.

### ORDER.

Now, on this day, it is hereby ordered that the foregoing bond on appeal be and it is hereby approved as to sum and sufficiency of surety, and is further hereby ordered that said bond shall operate as a supersedeas from the filing thereof herein.

Done in open court this 12 day of June, 1935.

GEO. F. ALEXANDER,

District Judge.

[Endorsed]: Copy received June 5, 1935.

J. A. HELLENTHAL,  
Of Attorneys for Defendant. [116]

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[Title of Court and Cause.]

### CITATION ON APPEAL.

United States of America,  
Territory of Alaska—ss.

THE PRESIDENT OF THE UNITED STATES.

To W. D. Gross, the above-named defendant, and  
to his attorneys, Messrs. J. A. Hellenthal and  
H. L. Faulkner, GREETINGS:

You are hereby cited and admonished to be and  
appear in the United States Circuit Court of Ap-

peals for the Ninth Circuit to be held in the City of San Francisco, in the State of California, within thirty days from the date of this citation pursuant to an order heretofore duly made and entered herein on June 12th, 1935, by the District Court of the Territory of Alaska, Division Number One, in this cause wherein you, said W. D. Gross are defendant and appellee, and Electrical Research Products, Inc., a corporation, is plaintiff and appellant, allowing the latter's said appeal to said Honorable Circuit Court of Appeals from that certain judgment hereinafter mentioned, and then and there to show cause, if any there be, why that certain judgment heretofore entered herein in favor of said W. D. Gross and against said Electrical Research Products, Inc., a corporation, on March 16, 1935, in the principal sum of \$58,436.33, and for the further sum of \$7,500.00 as attorney's fees, together with interest and costs thereon, should not be corrected and speedy justice done to the parties in that behalf.

WITNESS the Honorable CHARLES EVANS HUGHES, Chief Justice of the Supreme Court of the United States, this 12th day of June, 1935.

[Seal]

GEO. F. ALEXANDER,

District Judge.

Attest: ROBERT E. COUGHLIN,

Clerk of the District Court.

[Endorsed]: Service of the foregoing Citation admitted this June 14, 1935.

J. A. HELLENTHAL,

Of Attorneys for Defendant.

[Endorsed]: Filed June 12, 1935. [117]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED, that on January 19, 1935, the plaintiff made and filed herein its written motion, namely:

“That all of Section D of paragraph three of the first and fourth affirmative defenses in the amended answer, as amended, be stricken on the ground that it is sham, frivolous, incompetent, irrelevant and immaterial”,

which motion was thereafter denied by that certain order entered herein on January 19, 1935, and appearing of record, namely:

“Plaintiff’s motion against defendant’s amended answer herein, as amended, coming regularly on for hearing and the Court being fully advised in the premises, it is hereby ordered that plaintiff’s said motion be and it is hereby overruled, to which plaintiff excepts and its exception is hereby allowed.”

Thereafter, this cause came regularly on for trial on January 21, 1935, before a jury, the Honorable Geo. F. Alexander, Judge, presiding, and all parties being represented by counsel, whereupon the following proceedings were had:

Plaintiff’s witness,

R. EARLE ANDERSON,

being duly sworn, testified by deposition, read in evidence on the trial, as follows:

(Deposition of R. Earle Anderson.)

I was Comptroller of the plaintiff from April, 1927, until February, 1930, and executed, on behalf of the plaintiff, the agreements of March 28, 1929 (Plaintiff's exhibits Nos. 1 and 3) [118] and the agreements of September 4th, 1929, (Plaintiff's exhibits Nos. 2 and 4). At the time the original contract was under negotiation, the plaintiff company had a considerable number of installations of similar equipment in theatres throughout the forty-eight states of the Union, but had only one or two installations in Alaska and was unable to determine at the time whether it would have at any time more than three or four installations in Alaska. In connection with its regular standard contracts for theatre installations in the forty-eight states it had an established weekly service charge, based upon its ability to have the theatres which are the subject of these contracts visited on a regular schedule by engineers who would operate in particular territories in such manner that the cost of so servicing the theatres would be upon an economical basis. In view of the uncertain situation with respect to Alaska, the plaintiff company had no knowledge at the time of the negotiation of the contracts, exhibits 1 and 3, of the probable cost of furnishing engineering service for the theatres in that territory.

Thereupon witness further testified, over defendant's objection: it was consequently unwilling to enter into a contract which would fix the amount of its

(Deposition of R. Earle Anderson.)

compensation for the rendering of such service when the cost of rendering it was still an unknown quantity and was willing only to enter into such contract upon the understanding that the weekly charge for servicing would be made the subject of a subsequent agreement between the plaintiff company and the exhibitor. Accordingly, when the contracts, Exhibits 1 and 3, were executed, the amount of the weekly charge for servicing the equipment was left blank and this amount was later agreed to by the parties to the contract, exhibit 1, through the medium of the subsequent agreement, exhibit 2, and to the contract, exhibit 3, through the medium of the subsequent agreement, exhibit 4.

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Plaintiff's exhibits Nos. 1, 2, 3 and 4, which were received in evidence, read as follows: [119]

PLAINTIFF'S EXHIBIT No. 1.

287 T S

12 M

249700

Contract No. Alaska No. 2

THIS AGREEMENT made in triplicate in the City of New York, State of New York, this 28th day of March, 1929, by and between ELECTRICAL RESEARCH PRODUCTS, INC., (subsidiary of Western Electric Company, Incorporated), a Dela-



(Deposition of R. Earle Anderson.)

ware Corporation having its principal place of business in the City, County and State of New York (hereinafter called "Products"), licensor, and W. D. GROSS, INDIVIDUAL a Corporation having his principal place of business at No. .... Street, in the City of JUNEAU, State of TERRITORY OF ALASKA (hereinafter called "Exhibitor"), licensee, and operating the COLISEUM Theatre, at No. .... Street in the City of JUNEAU state of TERRITORY OF ALASKA (hereinafter called the "Theatre"):

WITNESSETH that, for and in consideration of the covenants, stipulations and representations herein set forth, the respective parties hereto agree as follows:

Grant of License and installation of equipment.

1. (a) Products hereby grants to the Exhibitor a non-exclusive non-assignable license to use in the Theatre (subject to all the terms, conditions, limitations, and agreements herein contained) the equipment hereinafter described for the electrical reproduction of sound in synchronism with, or as incidental to, the exhibition of motion pictures, or any performance given in conjunction therewith, and to employ (to the extent necessarily involved in such use of said equipment) the methods and/or systems of Products, under all United States patents and applications for United States patents, relating to said equipment or to such use thereof, which are

(Deposition of R. Earle Anderson.)

now owned or controlled, or which may during the term of this agreement be owned or controlled by Products, or in respect of which it has or may hereafter during the term of this agreement have the right to grant such license.

Service Day.

(b) Products agrees to install in the Theatre sound reproducing equipment (herein referred to as "Equipment"), as follows:

#### TYPE 2-S EQUIPMENT

Designed for use with Two Simplex Projectors for Film and Disc Reproduction

and will endeavor to complete such installation on or before ....., 192....., which shall be known as the "Tentative Service Day." Nothing herein contained shall be considered as a firm agreement on the part of Products to complete the installation of the Equipment on or before the said date, it being understood that the extent of the obligation of Products in this respect is limited to using its best efforts to procure the manufacture and delivery of the Equipment and to installing the same expeditiously. The day on which installation of the Equipment shall be completed and the Equipment made available to the Exhibitor as ready for public exhibition whether prior or subsequent to the "Tentative Service Day" shall be known as the "Service Day."

(Deposition of R. Earle Anderson.)

Use of Equipment.

2. The Exhibitor agrees that it will use and employ the Equipment only in the Theatre, and that it will at all times during the period of this license keep, maintain and operate the Equipment in the manner from time to time prescribed by Products and in no other manner. The Exhibitor recognizes the highly technical mechanism and art involved in the inventions and construction of the Equipment, and in the making of sound record (in any form) for use therewith, [120] and that the prestige and business reputation of Products might be seriously affected by imperfect operation of the Equipment or by its use with sound records which are not suited to it or which produce inferior results when used with the Equipment, and that use of said Equipment otherwise than as herein licensed may involve infringement of patent rights. Therefore, in order to secure and insure the functioning of the Equipment to the satisfaction of the parties hereto, the Exhibitor shall not, without the written consent of Products, move, alter, change or modify the Equipment, nor add anything thereto nor take anything therefrom; nor break the seal upon any part or collection of parts which is or may be sealed by Products; nor operate, use or employ the Equipment in any manner in conjunction with any sound record not made under license from Products for such use, unless such sound record is of such char-

(Deposition of R. Earle Anderson.)

acter that the Equipment will operate properly, reliably and efficiently to reproduce sound from such sound record with accuracy of quality and adequacy of volume. Also, in order further to secure proper functioning of the Equipment as aforesaid satisfactorily to the parties hereto, it is agreed that all additional and renewal parts and assembled parts for the Equipment shall be obtained from Products. Nothing herein contained, however, shall be construed as prohibiting the Exhibitor from taking all reasonable steps, consistent with the general intent hereof, either alone or together with Products, to protect, correct, or repair the Equipment in the event of an accident or breakdown. The Exhibitor agrees that prior to the first public use in the Theatre of each film and/or sound record, it will cause such films and/or sound records to be run privately upon the Equipment for the purpose of ascertaining that the Equipment is in satisfactory condition and adjustment for the particular film and/or sound record. The Exhibitor expressly agrees that if at any time the Equipment fails to function satisfactorily, it will immediately notify Products by registered mail and telegraph, and the absence of such notification shall be conclusive as to satisfactory functioning of the Equipment.

Removal to another theatre.

3. In the event that the Exhibitor shall for any reason cease to manage or to operate the Theatre,

(Deposition of R. Earle Anderson.)

Products will, at the request of the Exhibitor, remove the Equipment to and install the same in another theatre designated by the Exhibitor and satisfactory to Products, provided, however, that the cost of such removal and installation shall be borne by the Exhibitor and that a new agreement for the unexpired term of this license shall be executed by the exhibitor operating such theatre (the Exhibitor hereunder thereupon becoming guarantor to Products of the performance of such new agreement).

Instruction and inspection service.

4. Products agrees to instruct the motion picture machine operators of the Exhibitor in the manner and method of operating the Equipment, and will issue to each operator who has, in its opinion, satisfactorily completed a course of instruction in the operation of the Equipment, a certificate to that effect. Products further agrees, in order to perfect such instruction, and also in order to superintend the operation of the Equipment, to keep in attendance at the Theatre during the hours of performance and at such additional hours as may be necessary, an engineer or other person skilled in such operation for a period of one week following the day upon which the installation is completed and the Equipment made available to the Exhibitor as ready for public exhibition. Products also agrees to make periodical inspection and minor adjustments in the Equipment after it shall have been in-

(Deposition of R. Earle Anderson.)

stalled. Products may from time to time install such spare and renewal parts as may, in its opinion, be necessary to the satisfactory operation and maintenance of the Equipment. [121]

Installation charge

5. The Exhibitor agrees to pay to Products in New York Exchange an initial charge of Ten Thousand Five Hundred Dollars (\$10,500.00) payable as follows: The sum of One Thousand One Hundred Thirty Dollars (\$1,130.00) on or before the execution of this instrument, receipt of which is hereby acknowledged, and the sum of One Thousand Four Hundred Ninety Five Dollars (\$1,495.00) by a demand promissory note satisfactory to Products in the amount last mentioned, made by the Exhibitor and delivered to Products on or before the execution of this agreement and bearing no interest prior to presentation. which demand note Products agrees not to present for payment prior to the "Service Day," and the balance by a Series of Twelve (12) promissory notes, each in the principal amount of Six Hundred Fifty Six and 25/100 Dollars (\$656.25) satisfactory to Products made by the Exhibitor and delivered to Products on or before the execution of this instrument, the first of said notes maturing one month after the "Service Day" and the remaining notes at monthly intervals thereafter, and all bearing interest at the rate of 6% per annum

(Deposition of R. Earle Anderson.)

from the "Service Day." Products is hereby authorized by the Exhibitor to enter upon the face of any notes given hereunder, when the "Service Day" is determined by it the respective maturity dates thereof and the date from which interest shall run. Upon the failure of the Exhibit to pay any of the said notes as and when the same become due all of the said notes shall forthwith become due and payable.

#### Service inspection charge

6. In addition to any other payments required to be made by the Exhibitor hereunder, the Exhibitor agrees to pay Products throughout the term of the license hereby granted a service and inspection payment, payable weekly, which, for the first two weeks of said term, shall be payable on the Saturday next succeeding the "Service Day" and thereafter throughout the balance of said term on each and every Saturday in advance. The amount of such payment shall be in accordance with Products regular schedule of such charges as from time to time established. Under Products' present schedule, the service and inspection payment shall be \$..... per week, which charge shall not be exceeded during the first two years of the period of said license and thereafter for the balance of the term of said license shall not exceed the sum of \$..... per week.

(Deposition of R. Earle Anderson.)

Transportation charges

7. The Exhibitor agrees to pay the cost of transporting the Equipment from the place of shipment to the Theatre, and to accept delivery thereof from the common carrier and make payment directly to the common carrier of freight and express charges thereon. The Exhibitor will also arrange for any necessary loading, trucking and unloading to put the Equipment down inside the Theatre, and will directly defray the cost thereof.

Payment for parts, etc.

8. The Exhibitor agrees to pay to Products its list installation charges as from time to time established for any additional equipment or spare or renewal parts, furnished or supplied by Products, upon delivery thereof and to pay the transportation charges thereon. The Exhibitor also agrees upon rendition of invoices to pay for any services rendered and expenses incurred by Products' employees in connection with and for the benefit of the Exhibitor, except for the regular periodical inspection and minor adjustment service hereinbefore provided for.

Changes in theatre

9. The Exhibitor warrants that the Theatre is or before said Equipment is installed will be supplied with suitable electric current; electric power leads of suitable capacity with outlets conveniently located for power supply to the Equipment; suitable space, properly ventilated, for the installation of the storage batteries and charging equipment; drapes for



(Deposition of R. Earle Anderson.)

acoustic purposes, and suitable support for horns, and agrees to make such other reasonable changes, alterations and modifications as may be necessary [122] for the proper installation and accommodation of the Equipment, all at the expense of the Exhibitor and when and to the extent and in the manner prescribed by Products or its engineers, and agrees to comply with all local laws and ordinances relating to the use and operation of the Equipment and with any Fire Insurance Underwriters' requirements.

#### Title to Equipment

10. Title to and ownership of all equipment at any time furnished hereunder and also all tools of all kinds, drawings, prints and written descriptions and instructions, remains vested in Products.

#### Taxes

11. The Exhibitor shall bear and discharge promptly any and all personal property taxes which may be charged or levied in connection with the Equipment.

#### Access to equipment

12. The Exhibitor will permit Products, through its designated agents, engineers and mechanics, to have access to the Theatre at all reasonable hours, for the purpose of installing and from time to time for the purpose of examining and inspecting the Equipment, and will grant to Products full opportunity to make such adjustments therein and re-

(Deposition of R. Earle Anderson.)

pair thereto as, in the opinion of Products, are necessary or desirable.

Liability for interruptions, injuries, etc.

13. Products shall not be responsible in any manner for any interruption of service arising from any cause or for any defect or change of condition in the Theatre or in the equipment thereof or in the electric current supplied thereto or for any loss or damage to persons or property in or upon the said premises for any reason whatsoever. The Exhibitor agrees to indemnify Products for, and save it harmless from any liability or injury to workmen whom the Exhibitor shall furnish to assist in the handling, installing or operating of the Equipment, and from any liability to any persons resulting from negligence of such workmen.

Events of default

14. This agreement and the license hereby granted shall, at the option of Products, terminate and come to an end upon the happening of any of the following events, hereby designated to be events of default, to wit:

(a) Upon the bankruptcy or insolvency of the Exhibitor or the assignment of any of its assets for the benefit of creditors.

(b) Upon the failure or refusal of the Exhibitor for any reason to pay any of the items or sums herein agreed to be paid by it, including the payment of any of the notes provided for in Section 5 hereof,

(Deposition of R. Earle Anderson.)

within five days after such item or sum is or may become due, and as to this provision time shall be of the essence.

(c) Upon the Exhibitor's ceasing to own or operate the Theatre, unless the Exhibitor shall previous to its ceasing to own or operate the Theatre have notified Products in writing of the date it will cease to own or operate the Theatre and shall have made provision, satisfactory to Products, for the care and custody of the Equipment or for the assumption of this agreement by the successor operator of the Theatre.

(d) Upon a breach by the Exhibitor of any of the covenants herein contained relative to the use or maintenance of the Equipment, continued for more than fourteen (14) days after notice thereof by registered mail from Products. [123]

(e) Upon the removal of the Equipment or any part thereof without the consent of Products from the location and position in which it was installed by Products.

(f) Upon the failure of the Exhibitor to accept delivery of the Equipment from the transportation company or common carrier, or to facilitate the work of Products in installing the Equipment.

In the event of a default under any of the provisions of this section at any time during the term of this license, the license hereby granted and all obligations imposed upon Products by virtue of this

(Deposition of R. Earle Anderson.)

Agreement shall, at the option of Products and whether or not it terminates this license or removes the Equipment as hereinafter provided, be suspended during the continuance of such default.

Repossession of equipment.

15. Upon termination or expiration of this license by lapse of time or otherwise, the Exhibitor will surrender up and deliver possession of the Equipment to Products in good order and condition, reasonable wear and tear and obsolescence due to proper use thereof in the manner and place and for the purpose set forth in this agreement only excepted, and Products may repossess the Equipment and may, for the purpose of reducing the same to possession, enter the Theatre or any other premises where said Equipment may be and without any legal proceedings whatever possess and remove said Equipment, and the Exhibitor agrees to cooperate in such removal. If this license shall be terminated by default, or if the Exhibitor permits any of the events of default, hereinbefore enumerated, to occur, whether or not Products shall exercise the option to terminate this agreement, Products shall thereupon have the right without notice to take immediate possession of said Equipment, or any part thereof, and for that purpose may pursue the same wherever it or any part thereof may be found and may enter, with the aid and assistance of any person or persons, the Theatre

(Deposition of R. Earle Anderson.)

or other premises of the Exhibitor and such place or places whatsoever, whether belonging to the Exhibitor or not in which the Equipment or any part thereof may be placed, and may take and seize the same to its own proper use forever, free from any right of the Exhibitor under this agreement. Products shall also have the right in like manner to enter the said premises and remove the Equipment in the event of the said premises being destroyed or damaged by fire or otherwise, to an extent which, in the opinion of Products, endangers the Equipment. The exhibitor expressly covenants that in any such event no claim will be made for damage on account of such removal or otherwise, and the Exhibitor further agrees that it will hold and save harmless Products from and against any and all claims for damages by any parties whatsoever on account of such removal.

Replacement of equipment in the  
event of destruction.

16. In the event of the partial or total destruction of the Equipment during the term of this license by fire or any other cause, without fault or neglect on the part of the Exhibitor, provided the Exhibitor shall not be in default in respect to any of the terms of this agreement and provided the Exhibitor shall continue to operate the Theatre or after any necessary repairs to the Theatre shall

(Deposition of R. Earle Anderson.)

resume its operation, Products will, at its own expense, either repair the Equipment, or if in the sole judgment of Products, such destruction is so extensive as to render repair of the Equipment impracticable, install in the Theatre equipment then manufactured by or for Products as nearly similar as possible to the type of Equipment so destroyed. [124]

Patent protection.

17. Products agrees that subject to the provisions hereof it will at its own expense defend any and all actions and suits which may during the term hereof be brought against the Exhibitor for infringement of patents by reason of the use by the Exhibitor, for the purpose and in the manner contemplated by this agreement, of apparatus and equipment furnished by Products hereunder, and will pay or satisfy all judgments and decrees for profits, damages and/or costs which may be finally awarded against the Exhibitor by the Court of last resort in any such action or suit on account of any such infringement, provided that the Exhibitor shall give Products immediate written notice of such action or suit, full information and all reasonable cooperation in connection therewith and full opportunity to defend the same, and provided further, that this agreement shall not extend to any infringement or claim of infringe-

(Deposition of R. Earle Anderson.)

ment arising from any use of any of said equipment in combination with any apparatus or thing (not including films or records of Products, licenses) not furnished by Products, and that the liability of Products on account of any such infringement or claim of infringement shall be limited to its agreements in this paragraph contained and shall in no case exceed the total amount paid hereunder by the Exhibitor to Products. To the end that Products may protect itself and the Exhibitor from claims for infringement of patents, it is agreed that Products may at any time substitute for any of the Equipment or parts thereof which may have been furnished to the Exhibitor hereunder, other equipment or parts which Products shall after test determine to be equally suitable for performing the function required, such substitution to be made without additional expense to the Exhibitor and with the least possible inconvenience to it or interruption of its business.

License non-exclusive.

18. Nothing in this agreement shall be construed as granting to the Exhibitor an exclusive right or license to operate the Equipment in any particular City, Town, zone or neighborhood or as preventing or prohibiting Products from entering into similar agreements or granting licenses for the installation and use of similar equipment in competing theatres.

(Deposition of R. Earle Anderson.)

Period of license.

19. This license shall be for a term of ten years from the day upon which the installation shall have been completed and the Equipment made available to the Exhibitor as ready for use. It may, however, provided the Exhibitor shall not be in default in respect of any of the terms of this agreement, be terminated at the option of the Exhibitor at any time after the expiration of the first two years of the term hereof upon not less than six months' written notice given by the Exhibitor to Products of its intention so to terminate.

Entire understanding.

20. The parties hereto expressly stipulate that this agreement as herein set forth contains the entire understanding of the respective parties with reference to the subject matter hereof, and that there is no other understanding, agreement or representation, express or implied, in any way limiting, extending, defining or otherwise relating to the provisions hereof or any of the matters to which the present agreement relates. No agent or employee of Products is authorized to alter or modify this agreement in any way unless such alteration or modification shall be approved in writing by the President or a Vice President of Products or by such representative as may from time to time be designated in writing by either of such officers. [125]



(Deposition of R. Earle Anderson.)

No waiver by either party, whether express or implied, of any of the provisions of this agreement shall be construed as constituting a waiver of any other provision or provisions of this agreement or as estopping either party from its right to enforce any provision or all provisions hereof.

Not assignable.

21. This agreement shall not be assigned by the Exhibitor without the written consent of Products. It shall, however, subject to such restriction upon assignment by the Exhibitor, be binding upon the parties and their respective successors, assigns, and legal representatives and shall be interpreted according to the laws of the State of New York.

22. In addition to all other payments herein provided for, the Exhibitor agrees to pay promptly upon receipt of invoice therefor, Product's charges in connection with the installation of said equipment which arise by reason of such installation being without the States of the United States.

Termination clause.

23. It is hereby agreed that a certain agreement for the installation and licensing of Western Electric Sound Projector Equipment in the Coliseum Theatre at Juneau, Alaska, between Products and the Exhibitor dated July 28, 1928, be and the same hereby is in all respects terminated.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed by their

(Deposition of R. Earle Anderson.)  
duly authorized officers in their behalf, the day and  
year first above written.

ELECTRICAL RESEARCH  
PRODUCTS INC.

By (Signed) R. E. ANDERSON  
W. D. GROSS, INDIVIDUAL

In presence of

(Signed) R. B. HART  
as to E. R. P. I.

As to Exhibitor

By (Signed) W. D. GROSS

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PLAINTIFF'S EXHIBIT No. 3.

This exhibit is the same as plaintiff's exhibit No. 1 except that where the word "Juneau" appears in exhibit No. 1, the word "Ketchikan" appears in exhibit No. 3, and that the Ketchikan contract, exhibit 3, bears the numbers: "249600 Contract Number Alaska No. 1."

Exhibits numbers 1 and 3 are both on printed forms, except as indicated by the underscoring in the foregoing copy of exhibit 1.

(Deposition of R. Earle Anderson.)

PLAINTIFF'S EXHIBIT No. 2.

ELECTRICAL RESEARCH PRODUCTS INC.

Acoustic Department

250 West 57th Street

New York, N. Y.

Subsidiary of

WESTERN ELECTRIC COMPANY

Incorporated

September 4, 1929. [126]

Mr. W. D. Gross,  
Coliseum Theatre,  
Juneau, Alaska.

Dear Sir:

Referring to our agreement with you dated March 28, 1929, for the installation and use of Western Electric Sound Equipment in the Coliseum Theatre at Juneau, Alaska—

This agreement was executed with the provision left blank relating to weekly service payments, in order that the amount thereof might be later determined.

It is proposed that this provision of the agreement be now made definite, and that in order to give effect thereto, the above mentioned agreement be modified by striking out paragraph 6 thereof (which, as above stated, was left blank as to the amount of the charge) and inserting in lieu thereof the following:

6. In addition to any other payments required to be made by the Exhibitor hereunder,

(Deposition of R. Earle Anderson.)

the Exhibitor agrees to pay Products throughout the term of the license hereby granted a service and inspection payment, payable weekly, which, for the first two weeks of said term shall be payable on the Saturday next succeeding the "Service Day" and thereafter throughout the balance of said term on each and every Saturday in advance. The amount of such payment shall be in accordance with Products' regular schedule of such charges for theatres in Alaska as from time to time established. Under Products' present schedule, the service and inspection payment shall be \$29.75 per week, which charge shall not be exceeded, provided, however, that the Exhibitor agrees to reimburse Products for any extra expense incurred by Products because of the use of airplane or other extraordinary means of transportation incurred in connection with emergency service visits.

Will you kindly indicate your acceptance of the above by signing and returning to us one copy of this letter.

Very truly yours,  
(Signed) R. E. ANDERSON

Comptroller.

Accepted:

W. D. GROSS.

Exhibitor's signature witnessed by:

J. A. GAGE.

(Deposition of R. Earle Anderson.)

PLAINTIFF'S EXHIBIT No. 4.

This exhibit is the same as plaintiff's exhibit No. 2 except that where the word "Juneau" appears in exhibit No. 2, the word "Ketchikan" appears in exhibit No. 4. [127]

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Thereafter, Witness Anderson then further testified: In executing the agreements of September 4th, 1929, (Plaintiff's exhibits Nos. 2 and 4) on behalf of the plaintiff, I was acting under the authority of two resolutions of the Board of Directors of the plaintiff, adopted on May 25, 1927 and June 24, 1927, respectively, which resolutions have never been revoked. [128]

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Certified copies of the resolutions above referred to were admitted in evidence as plaintiff's exhibits Nos. 6-A and 6-B, respectively, and read as follows:

PLAINTIFF'S EXHIBIT No. 6-A.

I hereby certify that I am secretary of Electrical Research Products Inc., a corporation organized and existing under the laws of the State of Delaware, that as such I am custodian of the records and official seal of said company, and that the following is a true and correct copy of a resolution duly adopted by the Board of Directors of said

(Deposition of R. Earle Anderson.)

company at a meeting held at New York, New York, on June 14, 1927:

“RESOLVED, That Whitford Drake and R. E. Anderson who, by resolution adopted May 25, 1927, were authorized to sign in the name and on behalf of this company contracts for the leasing of synchronous reproducing equipments and electrical sound reproducing equipments to exhibitors be and they hereby are, and each of them hereby is authorized to sign in the name and on behalf of this company such further and additional contracts with respect to synchronous reproducing equipments and electrical sound reproducing equipments leased to exhibitors as may be requisite to terminate, modify, amend or otherwise deal with and dispose of such agreements with exhibitors in accordance with the needs of the business.”

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the company this 8th day of September, 1932.

[Corporate Seal] (Signed) H. B. GILMORE

Secretary of  
ELECTRICAL RESEARCH  
PRODUCTS INC.

(Deposition of R. Earle Anderson.)

PLAINTIFF'S EXHIBIT No. 6-B.

I hereby certify that I am secretary of Electrical Research Products Inc., a corporation organized and existing under the laws of the State of Delaware, that as such I am custodian of the records and official seal of said company, and that the following is a true and correct copy of a resolution duly adopted by the Board of Directors of said Company at a meeting held at New York, New York, on May 25, 1927:

“RESOLVED, That Whitford Drake and R. E. Anderson be and either of them hereby is authorized to sign in the name and on behalf of this company contracts for the leasing of synchronous reproducing equipments and electrical sound reproducing equipments to exhibitors.”

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the company this 8th day of September, 1932.

[Corporate Seal] (Signed) H. B. GILMORE

Secretary of

ELECTRICAL RESEARCH

PRODUCTS INC. [129]

## G. I. ALBRIGHT.

G. I. Albright, plaintiff's witness, by deposition duly taken August 5, 1932, testified:

## Direct Examination.

My present residence is Walla Walla, Washington; my age is twenty-nine years this month (July 1932) I have been employed by the plaintiff corporation as installation and service engineer from December 31, 1928, up to the present time; I was employed by plaintiff as inspector or engineer to make inspections and minor adjustments in the sound reproducing equipments in motion picture theatres in Alaska, including those of defendant in Juneau and Ketchikan, Alaska; my duties in that employment were to make general inspection of all motion picture sound equipment, adjustments either minor or major that became necessary incident to the operation of the equipment; at the time I entered upon that employment I had had seven months' previous experience doing that identical kind of work; for two years before that I was with the American Telephone Company doing similar work; I took an electrical engineering course at the Georgia School of Technology at Atlanta, Georgia; I was in Juneau all of August 24 and half of August 25, 1929, and during that time made a thorough inspection of the motion picture sound equipment in its entirety, made miscellaneous adjustments which were required through the operation of the equipment, and made a thorough check



(Deposition of G. I. Albright.)

of sound reproduction throughout defendant's theatre in Juneau and left the same in a satisfactory condition; I spent half of August 21 and all of August 22, 1929, in Ketchikan, Alaska, and during that time made a thorough inspection of the motion picture sound equipment in its entirety, made miscellaneous adjustments required through the operation of the equipment, and made a general and thorough check of sound reproduction throughout defendant's theatre in Ketchikan and left the same in satisfactory condition; it was my duty to make a report of such inspections to plaintiff and to the owner of the theatre or his representative; at the time those respective inspections were made and immediately after the work was completed, I made a written [130] report after each of those respective inspections of the sound reproducing equipment in defendant's Juneau and Ketchikan theatres; immediately after the inspection in the Juneau theatre I delivered a copy of my written report to defendant, who signed for said report, acknowledging receipt of a copy thereof, and immediately after the inspection in the Ketchikan theatre I delivered a copy of said report to L. C. Lemieux, defendant's representative and manager of his Ketchikan theatre, who signed for said report, acknowledging receipt of a copy thereof; I also immediately mailed a copy of each of said reports to the office of Electrical Research Products Inc., in Seattle, Washington;

(Deposition of G. I. Albright.)

each of those reports contained a complete statement of what I found and of the minor adjustments I made in the sound reproducing equipment upon those respective occasions in those two theatres; I did not omit from either of said reports any thing or condition that I found or did at either of said theatres; I now produce original carbon copy of my report for the Juneau theatre signed by W. D. Gross and original carbon copy of my report for the Ketchikan theatre signed by L. C. Lemieux.

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Thereupon said reports were received in evidence marked, respectively,

PLAINTIFF'S EXHIBITS Nos. 7-A and 7-B., the originals of which exhibits are made a part hereof as they cannot be reproduced in typewriting or printing. [131]

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#### DANNER KNOWLTON.

Danner Knowlton, plaintiff's witness, by deposition duly taken August 23, 1932, testified:

#### Direct Examination.

I reside at 710 St. Rose's Avenue, San Francisco, California; I am twenty-seven years old (1932); I have been employed by the plaintiff corporation from July 30, 1928, to date, formerly as

(Deposition of Danner Knowlton.)

inspector and now as district superintendent; I was employed by the plaintiff as inspector or engineer to make inspections and minor adjustments in the sound reproducing equipments in motion picture theatres in Alaska, including those of defendant in Juneau and Ketchikan, Alaska; my duties in that employment were installation, inspection and servicing of sound equipment; my previous experience or qualifications were: I had attended regular and special company schools; spent one year at Stevens School, Hoboken, New Jersey, and engaged in radio design and construction work with Bludworth, Incorporated, New York City; I spent three days in Juneau, Alaska, namely, October 2, 3, and 4, 1929, and on October 2 and 3, 1929, I inspected and serviced the sound equipment twice in defendant's motion picture theatre in Juneau, Alaska; I spent two days, namely September 29 and 30, 1929, in Ketchikan, Alaska, and on September 29, 1929, I inspected and serviced the sound reproducing equipment twice in defendant's motion picture theatre in Ketchikan, Alaska; it was my duty to make a report of such inspections to the theatre manager, to J. S. Briggs of Seattle, Washington, in the case of routine inspection report, and to G. M. Grosjean of Hollywood, California, only in the case of acceptance inspection report; during the course of those respective inspections, I made a written report of each of those respective inspections of the sound

(Deposition of Danner Knowlton.)

reproducing equipment in defendant's Juneau and Ketchikan theatres; immediately after the inspections in the Juneau theatre I delivered copies of my reports to [132] Charles Tuckett, defendant's manager at that theatre, who signed for the routine service inspection report acknowledging receipt of a copy thereof, and immediately after the inspections in the Ketchikan theatre I delivered copies of my reports to L. C. Lemieux, defendant's manager at that theatre, who signed for the routine service inspection report, acknowledging receipt of a copy thereof; I also mailed a copy of each of said reports to G. M. Grosjean, in Hollywood, California; and delivered copies thereof to J. S. Briggs, in Seattle, Washington; each of those reports contained a complete statement of what I found and of the minor adjustments I made in the sound reproducing equipment upon those respective occasions in those two theatres; I did not omit from any of said reports any thing or condition that I found or did at either of said theatres; I now produce original technical inspection acceptance report for the Juneau theatre, signed by myself; and original carbon copy of my routine inspection report for the Juneau theatre, signed by Charles Tuckett; and original technical inspection acceptance report for the Ketchikan theatre, signed by myself; and original carbon copy of my routine service inspection report for the Ketchikan theatre, signed by L. C. Lemieux.

Thereupon said reports were received in evidence marked, respectively,

PLAINTIFF'S EXHIBITS

Nos. 8-A, 8-B, 9-A, and 9-B,

the originals of which exhibits are made a part hereof as they cannot be reproduced in typewriting or printing. [133]

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J. B. DARRAGH, JR.

J. B. Darragh, Jr., plaintiff's witness, by deposition duly taken August 12, 1932, testified:

Direct Examination.

I reside at 362 North Gardner Street, Los Angeles, California; I am twenty-six years of age (1932); I have been employed by the plaintiff as engineer and inspector from February 4, 1929, to the present date; I was employed by the plaintiff as inspector or engineer to make inspections and minor adjustments in the sound reproducing equipments in motion picture theatres in Alaska, including those of defendant in Juneau and Ketchikan, Alaska; my duties in that employment were installation, inspection and servicing of sound equipment; my previous experience was: I graduated in electrical engineering at the University of Washington; had experience as a commercial radio operator; and had regular and special instruction courses in electrical research work; I spent two days in Juneau, namely, October 30, 1929, and November

(Deposition of J. B. Darragh, Jr.)

19, 1929, and on each of those dates I inspected and made minor adjustments in the sound reproducing equipments in defendant's motion picture theatre in Juneau, making a general inspection and clearing any impairment of the sound and minor adjustments; I spent three days, namely October 27, November 18, and November 21, 1929, in Ketchikan, and on each of those dates I inspected and made minor adjustments in the sound reproducing equipments in defendant's motion picture theatre in Ketchikan; it was my duty to make a report of such inspections to J. S. Briggs, in Seattle, and to defendant; during the course of and on the same day that I made each inspection, I made a written report of each of those respective inspections of the sound reproducing equipment in defendant's Juneau and Ketchikan theatres; immediately after and on the same day of the inspections in the Juneau theatre I delivered copies of my reports to Charles Tuckett, defendant's manager at that theatre, [134] who signed for said reports, acknowledging receipt of copies thereof; and immediately after and on the same day of the inspections in the Ketchikan theatre I delivered copies of said reports to L. C. Lemieux, defendant's manager at his Ketchikan theatre, who signed for said reports, acknowledging receipt of copies thereof; I also delivered a copy of each of said reports to J. S. Briggs in Seattle; each of those reports contained a complete state-

(Deposition of J. B. Darragh, Jr.)

ment of what I found and the minor adjustments I made in the sound reproducing equipment upon those respective occasions in those two theatres; I did not omit from any of said reports any thing or condition that I found or did at either of said theatres; I now produce original carbon copies of my reports for the Juneau theatre signed by Charles Tuckett and original carbon copy of my reports for the Ketchikan theatre signed by L. C. Lemieux.

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Thereupon said reports were received in evidence marked, respectively,

#### PLAINTIFF'S EXHIBITS

Nos. 10-A, 10-B, 10-C, 10-D, and 10-E,

the originals of which exhibits are made a part hereof as they cannot be reproduced in typewriting or printing. [135]

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#### ROBERT C. LITTLE.

Robert C. Little, plaintiff's witness, by deposition duly taken August 27, 1932, testified:

#### Direct Examination.

I reside at 189 St. Johns Place, Brooklyn, New York; I am twenty-five years of age (1932); I was employed by the plaintiff corporation as installation engineer and service engineer from July

(Deposition of Robert C. Little.)

31, 1928, to March 14, 1931; I am not now in plaintiff's employ; I was employed by the plaintiff as inspector or engineer to make inspections and minor adjustments in the sound reproducing equipments in motion picture theatres in Alaska, including those of defendant in Juneau and Ketchikan, Alaska; my duties in that employment consisted of inspecting and servicing Western Electric Equipment; my previous experience was: I had been employed in plaintiff's Service Department between November 7, 1928, and December 16, 1929; I spent two days in Juneau, Alaska, namely, December 17 and 18, 1929, and on December 17, 1929, I made a regular service routine inspection of, and inspected and made minor adjustments in, the sound reproducing equipment in defendant's motion picture theatre in Juneau; I spent one day, namely December 16, 1929, in Ketchikan, Alaska, and on that day I made a regular service routine inspection of, and inspected and made minor adjustments in, the sound reproducing equipments in defendant's motion picture theatre in Ketchikan; it was my duty to make a report of such inspections to my District Supervisor and to the theatre representative; at the time those respective inspections were made, I made a written report of each of those respective inspections of the sound reproducing equipment in defendant's Juneau and Ketchikan theatres; immediately after the inspection in the Juneau theatre I delivered a copy of my report to



(Deposition of Robert C. Little.)

Charles Tuckett, defendant's representative at that theatre, who signed for said report, acknowledging receipt of a copy thereof; and immediately after the inspection in the Ketchikan theatre I delivered a copy of said report to L. C. Lemieux, defendant's [136] representative at his Ketchikan theatre, who signed for said report, acknowledging receipt of a copy thereof; I also delivered a copy of each of said reports to my supervisor when I reported back in Seattle; each of those respective reports contained a complete statement of what I found and the minor adjustments I made in the sound reproducing equipment upon those respective occasions in those two theatres; I did not omit from either of said reports any thing or condition that I found or did at either of said theatres; I now produce original carbon copy of my report for the Juneau theatre signed by Charles M. Tuckett and original carbon copy of my report for the Ketchikan theatre signed by L. C. Lemieux.

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Thereupon said reports were received in evidence marked, respectively,

PLAINTIFF'S EXHIBITS Nos. 11-A and 11-B, the originals of which exhibits are made a part hereof as they cannot be reproduced in typewriting or printing. [137]

## E. S. TOBEY.

E. S. Tobey, plaintiff's witness, by deposition duly taken September 6, 1932, testified:

## Direct Examination.

I reside at 971 Hammond Street, West Hollywood, California; I am twenty-six years of age (1932); I was employed by the plaintiff as engineer and inspector from August 5, 1929 to October 24, 1931; I am not now in plaintiff's employ; I was employed by the plaintiff as inspector or engineer to make inspections and minor adjustments in the sound reproducing equipments in motion picture theatres in Alaska, including those of defendant in Juneau and Ketchikan, Alaska; my duties were service and inspection work; my previous experience was: I graduated from high school electrical engineering and received the company's training courses; I spent one day in Juneau, Alaska, namely, February 24, 1930, at which time I inspected and made minor adjustments in the sound reproducing equipment in defendant's motion picture theatre in Juneau, thoroughly inspecting and servicing the sound equipment; I spent one day, namely February 27, 1930, in Ketchikan, Alaska, and on that day I inspected and made minor adjustments in the sound reproducing equipment in defendant's motion picture theatre in Ketchikan, thoroughly inspecting and servicing the sound equipment; it was my duty to make a report of such inspections

(Deposition of E. S. Tobey.)

to J. S. Briggs, Seattle, Washington, and to the theatre personnel; during and immediately following those respective inspections I made a written report of each of those respective inspections of the sound reproducing equipment in defendant's Juneau and Ketchikan theatres; immediately following the inspection in the Juneau theatre I delivered a copy of my report to Charles M. Tuckett, manager of defendant's theatre, who signed for said report, acknowledging receipt of a copy thereof; and immediately following the inspection in the Ketchikan theatre I delivered a copy of said report to L. C. Lemieux, manager of defendant's theatre, who signed for said report, acknowledging receipt of a [138] copy thereof; I also delivered a copy of each of said reports to J. S. Briggs in Seattle; each of those reports contained a complete statement of what I found and the minor adjustments I made in the sound reproducing equipment upon those respective occasions in those two theatres; I did not omit from either of said reports any thing or condition that I found or did at either of said theatres; I now produce original carbon copy of my report for the Juneau theatre signed by Charles M. Tuckett and original carbon copy of my report for the Ketchikan theatre signed by L. C. Lemieux.

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Thereupon said reports were received in evidence marked, respectively,

PLAINTIFF'S EXHIBITS Nos. 12-A and 12-B, the originals of which exhibits are made a part hereof as they cannot be reproduced in typewriting or printing. [139]

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#### F. FOULON.

F. Foulon, plaintiff's witness, by deposition duly taken August 23, 1932, testified:

#### Direct Examination.

I reside at 323 South Chester Avenue, Pasadena, California; I am thirty-one years of age (1932); I was employed by plaintiff as installation and service engineer from July 1, 1929, to March 7, 1931; I am not now in plaintiff's employ; I was employed by plaintiff as inspector or engineer to make inspections and minor adjustments in the sound reproducing equipments in motion picture theatres in Alaska, including those of defendant in Juneau and Ketchikan, Alaska; my duties were installation and servicing of Western Electric sound reproduction equipment; my previous experience was: I had four years' service with the Southern California Telephone Company in automatic switchboard installation, tests and inspection; instructor of switch and relay adjustments; graduated from the University of California in electrical engineering in 1928, specialized in sound transmission and radio; had one year's service with a public utility in power transmission engineering; and received four weeks'

(Deposition of F. Foulon.)

total instruction in company's special training course; I spent five and one-half months in Alaska, of which I spent the following time in Juneau, Alaska, namely, from March 23 to 29, 1930; April 26 to 29, 1930, May 16, 1930; May 24, to 27, 1930; June 20, 1930; from June 28 to July 1, 1930; July 27, 1930; from August 4 to 11, 1930; and August 30, 1930; during that time I regularly and systematically inspected and made minor adjustments in the sound reproducing equipments in defendant's motion picture theatre in Juneau, making eleven inspections thereof, which were made on the following dates: March 25, 1930; March 28, 1930; April 27, 1930; May 16, 1930; May 26, 1930; June 20, 1930; June 28, 1930; July 27, 1930; August 4, 1930; August 11, 1930; and August 30, 1930; upon each of those [140] occasions I inspected the equipment, supervised and made necessary repairs thereto; during that time I spent the following time in Ketchikan, Alaska, namely, from March 21 to 22, 1930; April 25, 1930; May 23, 1930; from June 21 to 26, 1930; from July 29, 1930, to August 3, 1930; and September 1 to 4, 1930; during that time I inspected and made minor adjustments in the sound reproducing equipments in defendant's motion picture theatre in Ketchikan, making nine inspections thereof, which were made on the following dates: March 22, 1930; April 25, 1930; May 23, 1930; June 21 and 26, 1930; July 29, 1930, August

(Deposition of F. Foulon.)

3, 1930, and September 1 and 4, 1930; upon each of those occasions I inspected the equipment and supervised repairs thereto; it was my duty to make a report of those inspections to J. S. Briggs, supervisor in Seattle, Washington, and to the theatre manager; immediately after each of those inspections I made a written report of each of those respective inspections of the sound reproducing equipment in defendant's Juneau and Ketchikan theatres; immediately after the inspections in the Juneau theatre I delivered copies of my reports to Charles Tuckett, manager of the theatre, who signed for all of said reports, except the report dated June 20, 1930, which was an appointment call report, acknowledging receipt of copies thereof; and immediately after the inspections in the Ketchikan theatre I delivered copies of said reports to L. C. Lemieux, defendant's manager and operator at his Ketchikan theatre, who signed for said reports, acknowledging receipt of copies thereof; I also delivered a copy of each of said reports to J. S. Briggs, supervisor, in Seattle, Washington; each of those reports contained a complete statement of what I found and the minor adjustments I made in the sound reproducing equipment upon those respective occasions in those two theatres; I did not omit from any of said reports any thing or condition that I found or did at either of said theatres, except, in the Juneau reports, the fact that it was impossible to obtain any but partial cooperation in

(Deposition of F. Foulon.)

the matter of making adjustments and necessary repairs and it was necessary to do most of the work myself in the Juneau [141] theatre; and except, in the Ketchikan reports, that good cooperation was obtained from the operator and manager: I now produce original carbon copies of my reports for the Juneau theatre signed by Charles Tuckett, and original carbon copies of my reports for the Ketchikan theatre signed by Louis Lemieux.

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Thereupon said reports were received in evidence marked respectively,

PLAINTIFF'S EXHIBITS Nos. 13-A, 13-B, 13-C,  
13-D, 13-E, 13-F, 13-G, 13-H, 13-I, 13-J, 13-K,  
13-L, 13-M, 13-N, 13-O, and 13-P,

the originals of which exhibits are made a part hereof as they cannot be reproduced in typewriting or printing. [142]

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H. C. HURLBURT.

H. C. Hurlburt, plaintiff's witness, by deposition duly taken August 26, 1932, testified:

Direct Examination.

I reside at 2635 Eleventh Avenue North, Seattle, Washington; I am twenty-seven years of age

(Deposition of H. C. Hurlburt.)

(1932); I was employed by plaintiff as installation and service engineer from January 6, 1930, to February 13, 1931; I am not now in plaintiff's employ; I was employed by plaintiff as inspector or engineer to make inspections and minor adjustments in the sound reproducing equipments in motion picture theatres in Alaska, including those of defendant in Juneau and Ketchikan, Alaska; my duties were installing and servicing Western Electric theatre sound systems; my previous experience was: I was a graduate of the University of Washington in electrical engineering, and had been trained in the Engineering School of the plaintiff at Hollywood, California; I was in Alaska from December 22, 1930, to February, 1931, and I was in Juneau, Alaska, from December 23, 1930, until January 25, 1931; during that time on three occasions, namely, December 24, 1930, January 20, 1931, and January 24, 1931, I inspected and made minor adjustments in the sound reproducing equipment in defendant's motion picture theatre in Juneau, on each of those occasions inspecting that equipment and making necessary adjustments; I spent part of December 22, 1931, and the period commencing January 26, 1931, and ending February 13, 1931, in Ketchikan, Alaska; during that time on three occasions, namely, December 22, 1930, January 27, 1931, and February 10, 1931, I inspected and made minor adjustments in the sound reproducing equipment in defendant's



(Deposition of H. C. Hurlburt.)

motion picture theatre in Ketchikan, on each of those occasions inspecting that equipment and making all necessary adjustments; it was my duty [143] to make a report of such inspections to J. S. Briggs, in Seattle, and to the theatre manager; immediately after each of those inspections, I made a written report of those respective inspections of the sound reproducing equipment in defendant's Juneau and Ketchikan theatres; immediately after the inspections in the Juneau theatre I delivered copies of my reports to C. M. Tuckett, manager of defendant's theatre, who signed for said reports, acknowledging receipt of copies thereof; and immediately after the inspections in the Ketchikan theatre I delivered copies of said reports to defendant's manager at his Ketchikan theatre, who acknowledged receipt of copies thereof; the report made on December 22, 1930, was signed by L. C. Lemieux, who was then manager of defendant's Ketchikan theatre, and the reports of January 27, 1931 and February 10, 1931, were each signed by F. L. Stannard, who on those occasions was manager of defendant's Ketchikan theatre; I also delivered a copy of each of said reports to J. S. Briggs, in Seattle; each of those respective reports contained a complete statement of what I found and the minor adjustments I made in the sound reproducing equipment upon those respective occasions in those two theatres; I did not omit from any of said reports any thing or condition that I

(Deposition of H. C. Hurlburt.)

found or did at either of said theatres; I now produce original carbon copies of my reports for the Juneau theatre signed by Charles Tuckett and original carbon copy of my reports for the Ketchikan theatre signed by L. C. Lemieux and F. L. Stannard.

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Thereupon said reports were received in evidence marked, respectively,

#### PLAINTIFF'S EXHIBITS

Nos. 14-A, 14-B, 14-C, 14-D, 14-E, and 14-F, the originals of which exhibits are made a part hereof as they cannot be reproduced in typewriting or printing. [144]

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#### RALPH E. LAWRENCE.

Ralph E. Lawrence, plaintiff's witness, being first duly sworn, testified:

#### Direct Examination.

I live at 330 North Holly Street, Medford, Oregon; I am thirty-five years old; I am and have been, continuously since 1929, employed by plaintiff as service engineer; my previous experience or training was: instruction in the United States Naval Training Radio School, Goat Island and Mare Island, California, from May, 1918, to March, 1919, with considerable previous experience in amateur

(Testimony of Ralph E. Lawrence.)

radio and electrical equipment, and subsequent to discharge from the Navy employment by the United States Motor Manufacturing Company, in Los Angeles; I attended the Y. M. C. A. Radio School in Los Angeles from January until June, 1920, when I received a United States Department of Commerce first-grade radio license which I held continuously until 1933; I attended the Pacific Radio School in Los Angeles from July until October, 1920, and specialized in art and vacuum tube transmission and then worked for the Federal Telegraph Company in San Francisco as radio operator on passenger vessels going to South America; I went to work for the United States Shipping Board in May, 1921, and with R. W. White conducted a number of experiments in Australia, Tasmania, New Zealand, and South Africa in the use of radio telephone for the broadcasting of music and voice; I returned to New York in February, 1932, thence to the West Coast where I was again employed by the Federal Telegraph Company as chief operator aboard several passenger vessels, and in February, 1923, I went to work for the Southern California Edison Company, which at that time was building a hydro-electric project at Big Creek, California; while there I assisted in the design and operation of a radio system between the various camps; I was there until December, 1923, and then engaged in private business in Los [145] Angeles until 1929; in 1926 I was invited to become radio operator and

(Testimony of Ralph E. Lawrence.)

technician on the flight of the Southern Cross from California to Australia; in the fall of 1928, I took the Civil Service Examination for radio operator and technician in the Department of Commerce and was subsequently offered a position at the Oakland Airport in August, 1929, but rejected that in order to go to work for plaintiff, although in the meantime I had accepted employment as chief radio operator aboard the Calalie of the Mackay Radio Corporation, which position I held until I went to work for plaintiff in September, 1929, at which time I was given a specific course of instruction relative to talkie equipment under a special engineer sent out from New York in the laboratories, being a very tough six months course in three weeks relative to new equipment, physics of acoustics as applied to auditoriums, optical equipment, electric cell, motor control boxes, and their rather complicated circuits, equipment such as Western sound equipment; I was then sent out on a number of jobs with experienced men rendering acoustic service to theatres and installing Western Electric sound equipment in theatres being in that department from October 1, 1929, to January 1, 1930, when I was transferred into the service department and assigned to a group of suburban theatres in Seattle under the direct supervision of J. S. Briggs, which department had a number of experienced service men including Briggs, Russell Carson, R. C. Little, and George Corby, all located in

(Testimony of Ralph E. Lawrence.)

Seattle, who could give me a little help if I needed it; I was located there until March, 1930, when I was sent to Los Angeles to another service school held by plaintiff and given another intensive drilling in equipment and diagnosis of troubles, covering details in regard to diagnoses, quick remedy of troubles, and emergency operations; I was then sent back to Seattle and assigned to a territory in Spokane, Washington, as I was then considered sufficiently experienced to take over a group of theatres in a more remote locality; I remained in Spokane servicing all theatres in that territory until September, 1930, when I first [146] came to Alaska, arriving in Ketchikan September 8, 1930, and remaining continuously in Alaska from September, 1930, until September, 1932, except June, 1932, when I was doing some special work in municipal theatres in Seattle.

From September, 1930, until the removal of equipment in April, 1931, with the exception of the latter part of December, 1930, and January, 1931, I serviced defendant's theatres in Ketchikan and Juneau; H. C. Hurlburt, plaintiff's witness, serviced those theatres during that period of December, 1930, and January, 1931, as during that time I was travelling between Fairbanks, Anchorage, and Cordova, servicing Captain Lathrop's theatres.

Whereupon the following proceedings were had:

Q. On what date did you service Mr. Gross's theatres—the Coliseum theatre in Juneau?

(Testimony of Ralph E. Lawrence.)

A. I made a call on September 11th.

Q. Give the year please, also each time.

A. September 11th, 1930; October 7th, 16th and 20th, 1930; November 29th and December 1st, 1930; there was——

Q. Wait a minute—. Later did you go to Mr. Gross's theatre any dates after that? Those were all in 1930?

A. Yes.

Q. Did you service the Juneau theatre any dates later?

A. Yes.

Q. Will you give those?

A. In February, 1930 I was refused admission to the booth.

Q. February, 1930?

A. Yes—1931.

Q. February, 1931?

A. Yes.

Q. What dates did you actually service it in 1931?

A. On March 7th I made a service inspection there.

Q. On March 7th, 1931?

A. Yes.

Q. Did you actually service the Juneau theatre at any time [147] after that?

A. Yes.

Q. Will you give the dates as to the Ketchikan theatre, that you serviced?

(Testimony of Ralph E. Lawrence.)

A. Service visits were made in Ketchikan on October 11th, 1930 and on November 22d and 24th, 1930, and—you want me to go into 1931?

Q. If there are any dates on which you serviced it in 1931, yes.

A. In—on March 7th, on the 2d and 27th of March, 1931.

Q. What time did you get back from the Westward in 1931? What time did you get back to Southeastern Alaska, at either Juneau or Ketchikan?

A. Well, it was in the month of February. I don't remember the exact date.

Q. After returning to Juneau at that time, did you go to the Coliseum theatre in Juneau for the purpose of servicing it?

A. Yes.

Q. Did you service it at that time?

A. Well, as I read off here.

Q. Did you service it at that time—the Coliseum Theatre in Juneau, in 1931?

A. I was refused admission once.

Q. Answer "Yes" or "No".

A. No.

Q. Why didn't you?

A. I was refused admission to the booth.

Q. Who refused the admission?

A. The management.

(Testimony of Ralph E. Lawrence.)

Q. Who was "the management"?

A. Charles Tuckett.

Q. How long after that did you remain in Juneau? [148]

A. I don't remember the exact date. I was around here between boats, I would say at least three or four days.

Q. What was the next date you serviced it after that, in Ketchikan?

A. March 2d and 27th.

Q. Did you ever go to Ketchikan for the purpose of servicing that theatre after that date?

A. No.

Q. Were you in Ketchikan during that time?

A. Yes—I was——

Q. During that period were you refused permission to service the theatre at Ketchikan at any time?

A. No.

Q. Now then, in addition to these service calls you have mentioned here, Mr. Lawrence, did you actually spend any other time in Ketchikan with examining or checking out the equipment and its operation in either of these two theatres during this period?

A. Well—

Q. You can answer "Yes" or "No", Mr. Lawrence.

A. Yes.



(Testimony of Ralph E. Lawrence.)

Q. Will you please state the circumstances of that?

A. There was once or twice, the way my itinerary worked out I would usually go to Fairbanks and come back to Ketchikan and coming down from the Westward, if the boat were in port in Juneau for several hours I would endeavor to get in and determine whether or not there had been any difficulties and just a general idea of how the equipment was operating.

Q. How about Ketchikan?

A. No, that wouldn't apply there, because I—

Thereupon Witness Lawrence further testified: During these trips I spent at least three or four days in each town and [149] I spent a great deal of my time around the theatres, testing equipment troubles or suggesting means of improving operation; my calls were actually made by checking the equipment almost every day and I would attend the show at the theatre usually every night as that is part of the job, so as to check the distribution of sound in the auditorium and the quality of the reproduction. [150]

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Thereupon a life-sized photograph of a Western Electric amplifier rack was introduced into evidence marked

(Testimony of Ralph E. Lawrence.)

PLAINTIFF'S EXHIBIT No. 15,  
and a life-sized photograph of a Western Electric  
Simplex Machine was introduced into evidence  
marked

PLAINTIFF'S EXHIBIT No. 16,  
which exhibits can not be reproduced in printing  
or typewriting and the originals thereof are hereby  
made a part hereof.

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Thereupon Witness Lawrence testified further:  
my first operation, when I went to the theatre to  
service one of these equipments, would usually be  
to discuss the situation with the manager and if  
he had any troubles during the time since I had  
been there last, we could get together on them and  
straighten them out, if not, we would usually lis-  
ten to the show, preferably together, where we could  
discuss the quality and distribution of the sound in  
the theatre, which, after listening to it, served as  
a general guide to its quality and distribution and  
provided a means of checking each horn until in-  
dividually because they are located backstage; after  
that we would go to the booth where the talkie  
equipment was situated, and talk over with the  
operator the equipment, its functioning, and diffi-  
culties experienced so that I could better know  
what I would have to do other than the routine  
service of the equipment; after ascertaining that

(Testimony of Ralph E. Lawrence.)

information I then usually proceeded to the amplifier rack, plaintiff's exhibit No. 15, and first investigated the horn panel designated No. 17, making a visual inspection of the front parts in order to determine that the dial switches which are numbered 1, 2, 3, 4, 5, and 6 on this exhibit, were correct as they provide a means of obtaining a correct match between the output of the system and the sprockets, and I would check them visually to determine that they were on the proper setting and periodically clean the contacts to prevent any noise getting into the system which would result, if they were not clean, in the introduction of static [151] type noises or buzzes that interfere with the sound as reproduced when the actors on the stage are speaking, introducing an objectionable, extraneous noise in the auditorium, and if they were not properly matched or aligned, the quality of sound would suffer; I would also remove the back of the horn panel "17" on exhibit No. 15, exposing the internal wiring and these keys, which could also be designated 1, 2, 3, 4, 5, and 6, controlled the output of sound from each horn; the last key on the exhibit is designated on the exhibit "R & E"; the lowest keys are burnished periodically, which serves the same purpose as matching and cleaning the dial switches, as those keys are apt to become corroded and would introduce extraneous noise into the sound reproduced in the auditorium; the key "R & E" is also burnished as to its wiring to determine if it is

(Testimony of Ralph E. Lawrence.)

brittle or has poorly soldered connections or cor-  
rosions, as brittleness leads to broken wires and  
loss of sound, and corrosion leads to extraneous  
noises in the auditorium; the burnishing of these  
keys is necessary in order to keep the equipment  
in proper working order; I also examined the part  
of exhibit No. 15 that is designated by "17", and  
if there were any indications of poorly soldered  
connections, would resolder them because if that  
was not done there would be a loss of sound from  
one or the other of the horns, or both, depending  
upon the particular wire, and I would check the  
41-A amplifier, designated "7" on exhibit No. 15,  
which is provided with plate current meter on the  
left-hand side, designated "Plate" current on the  
exhibit, and the socket meter on the right-hand side  
of the meter designated "Filament" current; if they  
are not in proper working order the sound in the  
auditorium becomes noticeably bad; I would also  
remove the cover from this box in the center of  
the amplifier shown in the exhibit, exposing three  
tubes located in spring sockets in rubber sheathing  
and visually check those tubes and then clear the  
two prongs and check for corrosion the wire located  
behind those tubes, because any corrosion accumu-  
lating on the tube prongs [152] or sockets indicates  
itself by a noise of the frying or static type, and  
the tube located in No. 3 socket provides an electric  
match between amplifier No. 7 and amplifier No. 8,  
which follows it in the circuit, and if there is no

(Testimony of Ralph E. Lawrence.)

electric match a loss of quality of sound as reproduced in the auditorium occurs, that is, the entire range of frequency from real low notes to real high notes would be interfered with; I also expose the condensers, transformers, and choke coils, all of which are component parts of the amplifier designated No. 7 on exhibit No. 15, by removing the cover on the back of the rack, thus providing means of inspecting the gain control, which is at the left-hand corner where there are a group of figures on the exhibit running from 1 to 23 on the face of the dial, which indicates the setting of the gain control, and also allows us to get at the rheostat, which is indicated by the filament control and filament switch located in the lower right-hand corner of panel No. 7 on exhibit No. 15, and the filament control rheostat is in the upper right-hand corner of that panel; that rheostat provides means of controlling the filament current indicated by this meter and is drawn by the tubes to which I referred; it has a red mark indicating where the proper amount of current is and, if the middle is not on that mark, the effect is a noise or emission from the tubes, in other words, the quality of sound will suffer to a certain extent, and the key that is located in the lower right-hand corner turns the filament current supply on and off into the amplifier itself; I also make a visual inspection of the wire, choke coils, condensers, transformers, and resistors; clean this gain control in the upper left-hand corner on panel

(Testimony of Ralph E. Lawrence.)

"7" of exhibit No. 15, in order that there might be no open circuits from the tension of the rotating element or sliding contacts that makes the contact with the tubes; the rheostat in upper right-hand corner is cleaned to prevent any extraneous noise; the key contacts are burnished or cleaned to prevent any accumulation of corrosion that might result in noisy [153] conditions in the sound in the auditorium or an open circuit that might cut off the sound; the condensers, transformers, resistors, and choke coils are checked visually in order to determine if there is any leakage of the insulation compound that seals them; it is important that they be checked in order to overcome any tendency at a future date, if they indicate a source of such trouble, as loss or introduction of sound into the system; the keys, the contacts of which are located in the back of the amplifier shown on panel No. 7 of exhibit No. 15, are also cleaned because if they are allowed to get dirty it results in a weak sound, or noise, or quits altogether; if any of these defects that I have mentioned are discovered, such as a tube in poor condition, or any other component indicates deterioration or defects, the same is replaced: the gain control that I mentioned is actually a net work for means of controlling the volume output of loudness in the auditorium spoken or sung by the actors on the stage; I would next check the 42-A amplifier, designated No. 8 on exhibit No. 15, make a visual inspection of the meter in

(Testimony of Ralph E. Lawrence.)

the center of the amplifier panel to ascertain that the plate current is within limits so as to ascertain that the quality of sound is not being distorted or is not poor, and test individually each of the tubes by removing one tube and determining the reading on the meter and replacing that tube and then taking out the next one and getting an individual check on each tube; I likewise check the rectifier tubes on the right-hand side of amplifier panel No. 8 of exhibit No. 15, the amplifier tubes being located on the left-hand side of that panel; if any individual tube falls below a certain specified limit it is removed and replaced by a new tube in order to maintain a good quality of sound at all times; as the amplifier is what is known as a push-pull amplifier, and in that type of amplifier it is necessary that these tubes be properly balanced or matched, namely, the plate currents within certain limits of five millimeters of one another in order that [154] certain frequencies will not be amplified to a greater degree than others, which would result in distortion or poor quality of sound in the auditorium; in case of difficulties in either the amplifier or rectifier tubes, I replace them with new tubes; I next inspect the tube prongs at the base of each of these tubes leading to the filaments in the base of the tubes as the filament and plate element in the tube, in order to perform its function must make proper contact and be clean; so we check for tension the spring contact in the sockets themselves

(Testimony of Ralph E. Lawrence.)

into which the prongs set, as well as check the tube prongs; if they are not tight, or if they are dirty, or if there is improper contact, they serve to introduce various types of noises such as pops, buzzes, etc. into the auditorium, and if the contact is very poor they burn, which would also cause a poor quality of sound; if the transmission from the rectifier plate to the tube is very low it is replaced; if it is a matter of poor contact in the tube socket or prongs, it is brought up to standard, but if it is the socket, we sometimes have to replace it; I also check amplifier No. 8 on exhibit No. 15 by removing the cover on the back of that amplifier; the various devices and gadgets on the back of panel No. 7 and No. 15 on this rack on exhibit No. 15 are very complicated as there is a mass of wiring and auto transformers, which is also true of these amplifiers, Nos. 7 and 8, shown on exhibit No. 15.

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Thereupon a photograph representing the back of those panels was received in evidence marked

PLAINTIFF'S EXHIBIT No. 17,

which exhibit can not be reproduced in printing or typewriting and the original thereof is hereby made a part hereof.

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Thereupon Witness Lawrence further testified: that in a rough way it illustrated the various ar-



(Testimony of Ralph E. Lawrence.)

rangements of gadgets and devices at the rear of the panels, spoken of by him in connection with plaintiff's exhibit No. 15; that plaintiff's exhibit No. 17 shows less complexities in the way of gadgets, gearing, etc. than actually existed on the panels of the equipment in the defendant's [155] theatres; in checking the gadgets in the equipment in the rear of panel No. 8 of exhibit No. 15, a visual inspection is made, after removing the cover, of the choke coils, condensers, resisters, and retard coils in an effort to determine if there is any leakage in those components; wires are checked for brittleness that might result in loss of sound, poorly soldered and meter connections are checked for tightness and tightened, if necessary, because if not tight the effect is a poor contact on the tubes resulting in either loss of or weak sound or noisy components in the system that would be audible to the spectators of the show when the actors spoke or sang; we check the switch located in the main part through the amplifier itself and it is periodically cleaned and a small amount of petroleum jelly or ordinary vaseline is applied as a lubricant to prevent corrosion; it is also necessary to check for cleanliness because an accumulation of dirt or corrosion would shut off the main power supply from the amplifier, cutting off all sound; a check is also made of the cable that is composed of lead wire or rubber covered wire with lead shield, coming down on the inside of rack No. 15, to determine that none of the lead shield is broken and that

(Testimony of Ralph E. Lawrence.)

all connections and wires as they go through into each individual amplifier or horn panel are in proper condition, and if they are not, they are replaced or taped up, if necessary, with friction tape which serves as insulation to prevent them from coming in contact with any part of the rack itself, which is done in order to insure that there may be no breakdown in the system from that source; the tube prongs on the back of that panel are also cleaned and this switch, marked "110 volts A C", at the bottom of panel No. 8 on exhibit No. 15 is periodically checked for tightness of contact, cleaned if necessary, and a small amount of petroleum jelly or vaseline applied, because, if not kept in proper operating condition, possible loss of entire sound would result, as it serves the same purpose in regard to filament supply and plate supply to these tubes as the [156] switch to which I referred in the back of the amplifier does to the amplifier itself, in other words, if there is an open circuit there, your entire sound is gone; I next examine the projector marked "23" on exhibit No. 16; on which exhibit the projector lamp house, the upper magazine, and the projector head itself are all supplied by the theatre as they are really not part of the talkie equipment; the upper lamp house is indicated by the word "Simplex", on the projector head by "33" on this exhibit No. 16; the sound head is indicated by "1", in other words, the part of this photograph above the line where I have written "X Y" is supplied by the theatre and the talkie

(Testimony of Ralph E. Lawrence.)

equipment comprises the other part of exhibit No. 16; there were two of these machines, exhibit No. 16, in each theatre, which are essentially identical, but there is only one rack, plaintiff's exhibit No. 15, in each theatre; in checking the equipment, plaintiff's exhibit No. 16, I usually checked the machine speed by counting the revolutions on the main drive on the projector head, either counting them off with a watch or measuring them by means of a Sterrett speed indicator; the part I first check is indicated by "1" on plaintiff's exhibit No. 16, but the speed is checked at the projector head because there is a resisting portion on that shaft providing means of gearing that element and if there is a material variation in the speed in the exact number of revolutions per minute (89 or 91 resulting in a material variation in the speed of 90 film feet per minute) it becomes noticeable; I check this part of the equipment designated as No. 1 direct to No. 5 on exhibit No. 16, as that is the heart of the sound system, the part where the sound begins; I can better illustrate that from a model of the sound head.

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Whereupon a model of the sound head was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 18,  
which exhibit can not be reproduced in printing or typewriting and the original thereof is hereby made a part hereof.

(Testimony of Ralph E. Lawrence.)

Thereupon Witness Lawrence further testified: exhibit No. 18 [157] is what we call a 1-A or 1-B sound unit and is the heart of the sound system itself in the film recording method of producing tone and is substantially identical with the sound unit that was in the two talkie equipments in each of defendant's Juneau and Ketchikan theatres; the first thing I check in the sound head is the meter, which is a Western meter indicated by "0" "5" "2" amperes, which gives visual information about the amount of amperes being drawn by the lamp itself, that is located in the rear compartment of exhibit No. 18; a visual inspection is made of the entire lamp itself as it supplies the source of power or illumination, causing the sound to come through this photo electric cell and through the amplifier, the photo electric cell being located on the right-hand of the entire compartment and in the sub-compartment at the extreme right side of exhibit No. 18; any pronounced improper condition of that lamp will make itself noticeable in the sound in the auditorium by the loss of volume; it is usually accompanied by noise because, when it is lighted the filament throws off a gas, darkening the condition of the lamp internally, coincidentally causing the filament to deteriorate and to sag, and it is necessary, to obtain the best sound, that the filament and lamp be the same as the slit located in the lense assembly itself; any blackening of the lamp spoils the sound, and also as the filament be-

(Testimony of Ralph E. Lawrence.)

comes more sagged it becomes weaker and tends to become microphonic, introducing noises within the vibrating elements within the lamp itself as caused by the vibration of the machine; next we check the meter connections in order to make sure they are tight, also all screw connections, and visually inspect the wiring because defects in the wiring lead to static type of noises or possible loss of sound altogether through failure of the current to reach the lense, which static type noises would be discernable by the audience in the auditorium; if the lamp is too dark to insure proper sound or continued operation of the sound itself, it is replaced; if it is all right in that respect we then check it by turning the little [158] pad, located about the center of exhibit No. 18 at the top, through this little mirror which gives a visual picture of whether or not the light from the lamp is focused properly on the slit, which is located within the lense assembly, the latter being the barrel with the little window in it mounted on the bracket on exhibit No. 18; if there is anything incorrect about that, the lamp is focused on the slit itself by means of these adjusting nuts and that enables the raising and lowering or moving backward and forward of the film and, if out of focus it is re-focused, and if in bad condition, replaced; next we check the lense barrels which are in the center of the compartment in the tope of exhibit No. 18, to determine if they are clean and if not, we clean

(Testimony of Ralph E. Lawrence.)

them; next we inspect the portion of the sound unit located in the right center of exhibit No. 18, which is composed of the film guide rollers at the top right center of the sound unit and this gauge which is removable, and adjust the pad roller assembly, the latter serving the purpose of insuring that the film moves properly as it is pulled through the machine, the film passing through there in order to reproduce the sound; I check the different guide rollers first in order to determine whether they are worn and whether any wax from the film is piling up on them, as an accumulation of wax causes the guide rollers to rotate in an eccentric manner and as the guide roller turns, causes the film to jerk as it goes by the light beam itself, resulting in a flutter or perhaps laymen would call it a long sustained note fluctuating; if the guide rollers are dirty we clean them, if worn we replace them; the sprockets must be in good condition so as to engage the film properly as the points on the sprocket must engage the sprocket holes in the film and pull it at a constant speed without any fluctuation whatever; if the sprocket is worn we take it out and reverse it in order to secure additional life; the action of the film, pulled by the sprocket, tends to undercut that portion of the teeth of the sprocket against which the film is being turned, and it is [159] important that the sprocket be in good order to prevent condition of flutter, as the condition of these things would affect the sound as heard by the audi-

(Testimony of Ralph E. Lawrence.)

ence; I also check the sound gauge, situated in the middle of the compartment on exhibit No. 18, which is removable and has tension springs to pick it up; the amount of tension of those springs is important due to the fact that it also keeps the film passing this point steadily, doesn't allow it to fluctuate in a horizontal or any other direction; if they are worn we replace them, if dirty we clean them, if insufficient tension we correct it; I next inspect the adjustment of the pad roller assembly which slides back and forth, which must be adjusted to approximately .001 of an inch which insures that the film properly engages the sprocket and at the same time doesn't cause excessive film mutilation by the little rollers pressing too firmly against the film but allows it to go through without causing the film to jump, because if the film jumps it might jump off the sprocket entirely, resulting in no sound or in a series of modulated hums; periodically the adjustment of these guide rollers is checked with respect to the sound track of the film as it passes this aperture or light beam; the sound track is located on the outside edge of the film by a series of lines across the film track itself in Western Electric recording or by a series little mountains and valleys in RCA recording; next we check the photo electric cell itself to see that it is properly conditioned and to make sure all connections are tight, also that the cell is kept in the proper position by the spring and that there are no broken con-

(Testimony of Ralph E. Lawrence.)

nections from the photo electric cell itself, because if connections are not tight it results in no sound at all in the case of this one negative connection in the upper right-hand corner, and if the anal connection, in the back of the compartment, breaks the part of the circuit leading to the film amplifier located here, then you could not stand the sound in the auditorium, because there is [160] so much amplification it would drive you out of the house so that it must be kept tight and the little box checked to determine that there is no oil welling up; that cell is mounted in a housing by means of two small screws which thread up to the box; if they become loose the noise in the auditorium becomes predominant; if there is oil it results in static or a crying sort of noise discernible by the audience; I also check the little window of this photo electric cell to determine if it is free from dirt which would result in either loss of volume or in loudness and periodically check the position or output of that photo electric cell to see that it is in good working condition and has the proper transmission or frequency element which determines the entire systems output as to quality; periodically the meters *and* checked for calibration, to see that the meter itself indicates a true reading of the actual amount of current being used; I also check the tightness of the sheet of this bracket located on this pin on the left-hand side of exhibit No. 18, as its tightness has considerable effect on the quality



(Testimony of Ralph E. Lawrence.)

of the reproduced sound in the auditorium; if loose it produces a great deal of machine noise noticeable in the auditorium and the voice or music will have superimposed on it this background of machine noise; we also periodically check the film chutes located in the central portion of exhibit No. 18 to determine that this door is closed properly, in other words, to see that this spring is not broken, because the purpose of the film chute is to protect the film as it passes from the sound unit to this part of the machine designated as the lower magazine marked No. 23 on exhibit No. 16; that is periodically checked and also removed by taking this screw out; inside are located four shoes or guides which are occasionally, after some service, worn and result in mutilated film, disclosed by scratches on the screen or on the contact resulting in a modulated hum or sound in the auditorium; if worn badly we replace them; in that center compartment on exhibit No. 18 the light passes through the lense [161] assembly that modulates or changes it into a fluctuating light, which strikes the photo electric cell which converts that modulated light beam into electric energy; that electric energy is amplified through the entire sound system back to the stage horns and is converted into sound energy; the guide rollers serve the purpose of centering the light beam itself on the sound track and damage to the film would result in poor alignment of the pad roller assembly or poor condition of the sound sprocket, which would

(Testimony of Ralph E. Lawrence.)

result in damage or mutilation of the film, the film being supplied by the exhibitor who obtains it from the producer.

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Whereupon a photograph of a piece of film was introduced into evidence marked

PLAINTIFF'S EXHIBIT No. 19,

which exhibit can not be reproduced in printing or typewriting and the original thereof is hereby made a part hereof.

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Thereupon Witness Lawrence further testified: plaintiff's exhibit No. 19 shows two photographic images, one of which is the sound track and the other of the picture or play itself; the sound is located on the left-hand side of the exhibit between the sprocket holes and the picture itself, and that part of the exhibit between A, the top, and B, the bottom, actually represents a picture of the sound shown on the film that goes through the machine; we always check the film stripper plate which is centered between the teeth of the sprocket, in order to prevent the film wrapping around the sprocket, to prevent breakage of the film at that point, in order to see that it is properly located with respect to the film sprocket because if not, and the film breaks, the latter will generally wind around the sprocket, and you don't want it too close on ac-

(Testimony of Ralph E. Lawrence.)

count of rubbing on the sprocket itself, but want it close enough to prevent winding around the sprocket; next after checking the sound unit, we check the amplifier designated No. 6 on exhibit No. 15; that amplifier is suspended by [162] means of coil springs, the purpose thereof to prevent vibration of the machine itself being transmitted to the amplifier as much as possible and some of those springs carry condensers of electric current and it is important that those springs be not distorted, otherwise amplifier No. 7 would be apt to bump the housing in which it is mounted probably resulting in introducing extraneous noise into the system that would be indicated in the auditorium through the stage speakers; the two tubes in the tube sockets of amplifier No. 7 on exhibit No. 15 are tested by the same means that we test the other tubes and if found defective they are replaced; it is very important that those tubes be in very good condition due to the fact that there is so much amplification from that point to the stage speakers, that any noises even of small dimensions, at that point would be very loud in the auditorium; if they are all O. K. we clean the prongs and put them back; there are also two resistors located behind this tube which we call B in the amplifier on the left-hand side of exhibit No. 16, that forms resistance network coupling with the photo electric cell to the root of the first vacuum tube and it is important that those grids should be kept in good order and contacts

(Testimony of Ralph E. Lawrence.)

tight and clean because if not you would have more extraneous noise in the system in the form of static or a crying sound; we make sure the grids in which they are fastened are tight, and check them for cleanliness, greasing them if necessary; we inspect the wiring to determine if there is any brittle wire that might break and result in loss of sound or introduction of noise in the system; we also check for calibration or accuracy of the milliammeter located at the lower left corner of this amplifier, which is there for the purpose of measuring or indicating the amount of current those tubes are drawing, and if the meter is incorrect we regulate it if it can be done locally, or if it is entirely defective, return it to the factory for repairs; we check [163] the knob at the right of the meter where there is a rheostatic control of the amount of current to the tubes; by removing those four screws, two on each end of the front of the amplifier, it exposes the internal wiring, and the rheostat can be cleaned and the meter connections tightened, and an opportunity is given to determining whether there are any poorly soldered or otherwise defective connections; I customarily clean the rheostat every trip because if not in a clean condition it has an effect on the sound; I also examine the amplifier on the right-hand side of exhibit No. 16, in connection with the terminal strip located below the main part of the amplifier itself; at that point we measure the voltage supply of the cell as it is important

(Testimony of Ralph E. Lawrence.)

that the voltage from that cell itself and the voltage supply to the filament and plates to the tubes be proportionate in order to get the maximum result obtainable from that part of the equipment; if the polarizing voltage on the electric cell is low it results in an impairment in the sound, probably in lack of volume, perhaps loudness, if too high, in distortion or lack of quality of the sound in the auditorium; if there is error in that voltage in those systems such as were in defendant's Ketchikan and Juneau theatres, if the batteries are low or old, they would be replaced so as to prevent introduction of flutter or noise; we also check that amplifier to determine if all connections are properly soldered, that there are no broken or brittle wires, no wire exposed to oil or an oil soaked condition, as a thoroughly oil soaked group of wires in cable form such as that tend to introduce noise and leakage in wires, which results in noise in the sound system reproduced in the auditorium; if any oil soaked wires are found, ordinarily we would soak it up by applying a coat of shellac; the reason that there are two distinct equipments in each theatre is, not because they are used at the same time, but in order to keep a continuous picture on the screen and also maintain continuity of sound so that there will be no [164] interruption of the picture or sound, and thereby keep a constant supply of sound in the theatre and a constant picture on the screen; those gadgets, called the attenuator strips, shown

(Testimony of Ralph E. Lawrence.)

by dots or small white circles on exhibit No. 16, are connected to the output of the film amplifier and serve to control the volume or loudness as it reaches the auditorium, and to balance the output of the two machines so that if you are running on a certain loudness and change from one machine to the other, you can maintain the continuity of the sound at the same degree of loudness, and by moving the strip located at the top, above the figure No. 19 on Exhibit No. 16, you can lower the volume of loudness of the machine, and the lower portion of the attenuator strips serves in the same respect to the disc reproduction as the other portion does to the film reproduction; if a balance does not exist then we correct it by adjusting this strip so as to keep the machines balanced at all times; this lack of balance can be checked by sitting in the auditorium and listening to the sound; we also check the switch at the top, above the amplifier, on the left-hand side marked "Film" in the center "Off", on the right-hand side "Disc", on exhibit No. 16, which switches the sound reproduced by the film equipment to the sound reproduced by the disc; the switch contacts are in the rear of the amplifier housing itself; those contacts must be cleaned and proper tension maintained in order to prevent the possibility of loss of sound or noises introduced into the system; we clean them with petroleum jelly as a means of protection against corrosion and also as a lubricant; when that switch

(Testimony of Ralph E. Lawrence.)

is in the position marked "Film" on exhibit No. 16, you are reproducing sound recorded on the film, when in the position marked "Disc", you are reproducing sound recorded on the disc; in the back of that amplifier, below the switch contacts I mentioned, there is another terminal strip and the wiring is brought in there and [165] soldered on the binding post which I check for evidence of faulty connection or deterioration; the visible portion of the wires coming out of the back of that amplifier are inspected to see whether they are broken or in an oil soaked condition; in the back part is also located the drives which must be checked for worn parts; the motor couplings which serve as couplings between the motor and main source of drive called the 709 drive, serve the purpose of a gear drive, transferring power by means of a flexible coupling; it must be flexible in order to overcome any tendency to fluctuate in speed, such as very large fluctuation; out of that gear drive are shafts, one of which comes to another drive located behind the projector head, between the projector head and the sound head, and another coming up which drives a series of gears and serves to keep the film sprocket rotating at a constant speed; those drives are checked for wear; the coupling discs in the motor couplings are checked for wear and loose screws; the gear boxes are inspected to see if they have enough grease; the Universal joints coupling, the shafts between the 709 drive and the drive causing the projector

(Testimony of Ralph E. Lawrence.)

head and the sprockets to rotate, are inspected for wear, and all parts replaced if necessary; worn parts at that point, either in the shaft or motor coupling itself, would have a decided tendency to introduce back lash which would tend to introduce flutter into the sound and would probably cause a certain amount of unsteadiness on the screen; we check the set screws in all these various units I have described to see that they are not loose which would cause the motor, for instance to rotate without rotating the other part of the equipment; we also check the brakes located below the amplifiers on exhibit No. 16, for adjustment as there are certain definite limits to which they should be applied, and a too sudden stopping is almost as bad as a freeze-up, by which I mean where [166] due to lack of lubrication or grit getting in between them, friction comes between two rotating elements causing them to expand, resulting in their getting hot and reaching the point where they stick together; if the brake is not in proper condition we adjust it to its proper stopping point, usually between five and seven seconds, and periodically the switch itself, located beneath the base on plaintiff's exhibit No. 16, is checked because there is considerable amount of oil leakage from the component parts in the mechanism and occasionally that oil will accumulate in the switch; we clean the oil out, clean the switch and check the screw connections; we also check those portions in the amplifier that work like



(Testimony of Ralph E. Lawrence.)

threads or screws, which is really a flexible conduit and which is subject to oil accumulation; they are checked with every inspection in order to determine if any considerable amount of oil has seeped out from the lowest point from which the flexible conduit reaches; that conduit is for all the wiring from the machine to other parts of the system and is connected to the main loudness control, which is located on the front wall down here between the machines, and the motor control box, which is usually located on the right-hand side of the right-hand machine; any wiring that becomes oil soaked must be checked because oil will disintegrate rubber and if the rubber disintegrates the effective part of the system is lost resulting in possible introduction of noise into the system; all the wiring is inspected, connections checked, also that single wire from the photo electric cell, numbered 5 on exhibit No. 16, is also checked; we periodically check that to determine that it isn't too loose or too tight and not oil soaked; if too tight it will vibrate like a violin string and introduce noise into the system; if too loose the effect is very much the same, as it is a very sensitive part of the entire sound system, and if it is oil soaked, it will probably reduce the volume of [167] the sound and also have a tendency to introduce those same types of noises; if oil soaked we replace it; we also checked the conduit itself to determine that it is not loose as it should be tight so that it will not pull loose and break

(Testimony of Ralph E. Lawrence.)

the wiring and lead sheathing which would result in loss of sound or noise in the system; we periodically check the pilot lights which indicate whether or not the switch *if* properly placed; next we check the turntable shown on the left-hand side of exhibit No. 16, which is driven through rubber couplings and shafts from the motor to the gear box, inspect the couplings to determine whether or not they are deteriorated or improperly aligned because if not in proper condition it would continually break the rubber couplings, and we check the reproducer arm on the left-hand side, or figure 19 on exhibit No. 16, for drift as well as the reproducer or pick-up unit itself and also determine whether or not the turntable is level and the gear box, below the turntable, indicated by the figure 19 on exhibit No. 16, is checked for oil level so as to prevent flutter which would affect the quality and naturalness of the sound; we check the equalizer, located beneath the gear part, to determine whether it is properly adjusted or not, which serves to reduce noise from that source; from that equalizer a flexible wire is run through the connecting box to the connecting block from where they are carried to the switch discussed, which is located at the top of the amplifier on the right-hand side of exhibit No. 16; those wires are checked to determine that screw connections are tight and that there are no broken connection blocks in any source; an open wire at that point would result in loss of sound; we also check

(Testimony of Ralph E. Lawrence.)

the motor, located behind the lower magazine, indicated by No. 3 on exhibit No. 16, checking the commutator on each inspection, and the brushes are checked for wear and proper setting up, the caps are cleaned, the connections are checked; faulty conditions there would result in fluctuating [168] speed of the motor, which would affect the voices making them high-pitched; we check the bearings to determine if they are overheated and about once a year the motors are taken down, old oil flushed out and clean packing put in; all removable elements on a routine inspection are checked for heat; the drives that I previously mentioned are periodically taken down and brushed out, all old grease removed and new grease added; the gears are checked internally for oil at that time and in the case of the 709 drive, the shaft is checked for loose pins, because if they become loose it might result in one of the gears inside becoming loose with the result of stripping of gears and shutting down of the machine; we check the base itself periodically, but not on every inspection trip, to determine whether it is level; we also supply or install, as is required, insulation of the legs of the base from the floor of the booth so as to prevent noise from the booth being carried into the auditorium; we check for proper alignment all the way from the point where the shafts are connected to this gear box to the motor, from the motors to the motor couplings, to the main gear reduction drive, also the chains which drive the

(Testimony of Ralph E. Lawrence.)

various component parts including the take-up reel; if the chain is excessively worn, we adjust it, keep it tight but not too tight; we open the door, indicated by No. 33 on exhibit No. 16, check the take-up tension and where the take-up reel is located on a spool that is driven by means of those chains in a group arrangement, serving to move the take-up reel and wind up the film, in order to see that it isn't too tight, because if too light it will often mutilate the film when the machine starts up and also may affect the sprocket; we check that sprocket and if it is worn reverse it in order to extend its life, and if it cannot be reversed, replace it; there is a pad roller adjustment on the sprocket similar to [169] the equipment indicated at No. 18 on exhibit No. 16, which is also checked for adjustment for the same purpose, to eliminate the possibility of its being too tight or too loose and thereby allowing the film to become disengaged from the sprocket; as those things all have an effect on the sound reproduction; we make a visual inspection of the entire machine for cleanliness, as that indicates whether or not excessive leakage from the drive exists: in defendant's theatres the panel or rack, plaintiff's exhibit No. 15, was situated behind the left-hand machine, the equipments being represented by exhibit No. 16; another part of the equipment is what is known as main loudness control, which is situated on the front wall of the booth between the two machines of which this is a picture.

(Testimony of Ralph E. Lawrence.)

Whereupon Witness Lawrence produced a photograph which was received in evidence and marked

PLAINTIFF'S EXHIBIT No. 20,

which exhibit can not be reproduced in printing or typewriting and the original thereof is hereby made a part hereof.

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Thereupon Witness Lawrence further testified: exhibit No. 20 is a substantial representation of the equipment that was used in connection with defendant's two theatres; the upper part of it, which I have marked "A", is the fader, and the lower part of it is the control box; the fader regulates the volume of sound in the auditorium; its condition is checked for cleanliness or excessive wear of any stationary or rotating element; the wiring is always inspected for brittleness and deterioration, or poorly soldered connections; the screw connections are checked for tightness; the keys are periodically cleaned and inspected, the other elements are cleaned and if they are worn, we repair or replace them; the rotating element, which is composed of three spring contacts, is checked to determine that those contacts have the proper tension and are not going to open the circuit at that point due to excessive wear or lack of tension; all these conditions, if defective, [170] introduce noise into the auditorium and if they are dirty or worn excessively, might cut out the sound altogether:

(Testimony of Ralph E. Lawrence.)

any broken wires are repaired, and poorly soldered connections are checked and if necessary resoldered, and the conduit connections are checked to determine if they are tight; the motor control box, plaintiff's exhibit No. 20, has a cover on the front of the box, which can be removed, exposing the internal wirings, connections and four vacuum tubes which control the speed of the motor; that is a very complicated circuit, therefore a check is made of the tubes in the control box, the prongs are cleaned and checked to see that they make a good tight contact with all the spring contacts; the screw connections, the ground bushings and motors in those control boxes are checked, also there is a great mass of wiring, condensers, resisters, transformers, choke coils which are visually inspected and all wires are checked for soldering connections; each machine has a K F Dun 51 motor and its associated control box marked "B" on plaintiff's exhibit No. 20, which control box covers the motor that is situated in the equipment at the point indicated by the figure 23 on exhibit No. 16, and besides making a visual inspection of the various gadgets and mechanisms, the tube prongs and sprockets are cleaned; I tighten screw connections, check the fuses as to voltage and tightness of contact and periodically clean them; the equipments in defendant's theatres had batteries in them, the condition whereof were checked on the routine check; in the equipment in each of defendant's theatres there was what we

(Testimony of Ralph E. Lawrence.)

call an A box, designated by "A" on exhibit No. 15, that serves as the redistribution point for all wiring in the system, which is periodically checked in order to determine if the soldered connections in the terminal strips are all right; if defective, they are repaired or resoldered to make those connections positive because otherwise it would affect the sound; the location of the ground is also posted in that box; below that box is the horn meter signal [171] cabinet, indicating the current supplied to the horn backstage by the batteries, also terminal strip; the condition of the horn in that apparatus is periodically checked and tightened to make sure all wiring is in good order, and the rheostat situated in that box, controlling the current supplied to the horn unit field is cleaned and checked for deterioration, and replaced if necessary; all loose conditions are tightened and calibrated, and if defective replaced; the rheostat control cabinet is checked and cleaned and the two switches located near the monitor, one of which controls the power supply to the amplifier designated No. 8 on exhibit No. 15, the other of which provides the means of opening and closing the power supply to the stage and also monitor unit, are checked to insure proper contact; I see that all screw connections are tight and cleaned and if necessary petroleum jelly is applied as a lubricant and corrosive preventative; these 4-6 volt batteries which are the main power supply for the tubes located in the amplifier designated

(Testimony of Ralph E. Lawrence.)

No. 17 on exhibit No. 15, and for the tubes in the film amplifiers, indicated at the right front of exhibit No. 16, which batteries in the Juneau theatre were located on the roof above the building somewhat in the rear, in the Ketchikan theatre above the booth and in a space formed by the back and the floor and the ceiling of the booth, and which was supplied by plaintiff, were all checked for tightness of contact, connections tightened if necessary, non-oxide grease applied to prevent corrosion and tops checked and cleaned; the internal condition of those batteries was checked with a common hydrometer and distilled water added if necessary; the battery terminals inspected for tightness and if necessary tightened; also the battery charging equipment, which was furnished by plaintiff and is in this same element near the batteries themselves, was inspected on each trip to determine the condition of the two tundra bulbs that served to convert direct current into alternating current, as [172] the condition of those bulbs determines whether the filaments are sagging, and if so, it would result in forming a carbon; if necessary they are replaced; this equipment was also checked to determine whether properly fused, fuses cleaned, and checked to see whether the fuse clips were tight and the tundra bulbs soundly screwed into the sockets: the B-40 charging panel, located in the same room where the batteries and charger are located, and furnished by plaintiff, of which there was one in



(Testimony of Ralph E. Lawrence.)

each of defendant's theatres, has a number of screw connections which are checked for tightness to determine whether the wiring is in good shape and periodically all these fuses are removed and cleaned; each machine has a 12 volt supply fuse which must be cleaned periodically, and the 90 volt batteries, which serve as polarizing voltage for the photo electric cell and also for these tubes located in the amplifiers in the right front at No. 23 on exhibit No. 16 are checked and measured for voltage and age, as considerable noise may result in the system as they become old, and the fuses in those 90 volt batteries are cleaned periodically; I also check the clips holding the fuses and the soldered connections to the batteries themselves, and the ground is periodically checked to determine whether it is tight and making good contact, and whether sufficient non-oxide grease is present to overcome corrosion, as defects in the ground would introduce hums, popping, or frying noises and a defective ground might cause entire loss of sound, which noises would be discernible to the audience in the theatre; plaintiff also furnished a B box, horn cables and horns situated backstage, there being two horn units in each of defendant's theatres, which horn units were checked to see that they were functioning properly and that the cables were connected to their proper binding posts and the voltage at the horn units sufficient to maintain proper operation and its connections were tight and

(Testimony of Ralph E. Lawrence.)

that there was no internal mispoling; all the wires in the horn [173] units were checked to determine that they were in their proper positions and tight and the voltage supply ample, and were not internally mispoled; the throats of the horns must be cleaned of the dust that accumulates in them and the screen itself must be inspected to see that the little holes are in it; the screens must give off a highly reflective light in order that the picture be clear and yet must be sufficiently porous not to interfere with the sound waves from the horns, and they are periodically examined to determine if those little holes are blocked with dust or anything of that kind or whether the picture itself is being disturbed due to dirt or streakedness of the front side; as a rule screens are supplied by Erpi but I believe Gross replaced them later by a screen of his own purchasing; the horn supports or horn towers backstage must be checked to see whether or not the horns are kept in proper positions as otherwise that would result in improper distribution of sound in the auditorium itself; I believe they were supplied by Erpi but I am not sure of that fact.

I did not make on each of my visits to defendant's theatres an inspection embracing the entire scope of the inspection and examination that I have testified to; some of that work, such as changing of grease in drives, or flushing out motor bearings, is periodical and some of the items of examination

(Testimony of Ralph E. Lawrence.)

that I have mentioned aren't necessary to be made on each inspection but are done as required; I can not state the exact percentage of those particular items of inspections that I would make on each examination, but there are a number of things done on each routine call, such as testing the tubes, checking the spare parts in order to determine that they are sufficient for any emergency, and checking the photo electric cells, in order to determine that their volumes are O. K.; I might check the photo electric cell on one trip and if it was not placed in service between one trip and the next, presumably it was in the same condition as before and it [174] would not be necessary to recheck it.

I am familiar with the type of routine service report used by plaintiff's service engineers during 1929 and 1930, such as plaintiff's exhibit No. 7-A; on that report the figures under "Batteries" "Hydrometer Reading F-1 F-2" indicate the actual hydrometer readings taken from the batteries themselves; the figures under "Batteries Electro Light Level" "F-1 F-2" indicate the electro light level in those batteries; the figures under the columns "Quality Volume Surface" are based upon a code ranging from one to six, one meaning poor and six meaning good; the figures under the column headed "Fader" mean the point at which the fader was operated on the average, or the amount of volume that was required to fill the auditorium; the column headed "Setting of Horns" "Upper Left"

means the left-hand horn, and "Upper Right" means the right-hand horn; the figures under those columns indicate the point of setting of the dial switches that provide the electric match between the amplifier and horn unit; the figures under the section headed "Amplifiers and Rectifier" indicate the reading of the current for those particular plate meters; the figures under the columns headed "Turntables" indicate the checking of those various actions or parts of the turntables in the No. 1 or left-hand machine and the No. 2, or right-hand machine, which is also true of the column headed "Reproducers" and the figures under "Receivers" show the checking of the polarity and connections; under the heading "Gain Control Setting Voltage Film B Batteries", the figure 23 indicates that the gain control was wide open, and the figure 90 indicates the voltage of each of the two photo electric cell B batteries; under the heading "Battery Charging Panel" the line "Charging Rate" with the figure after "F" indicates the rate at which the batteries were being charged; the figures under the heading "Film Amplifier and Pick Up", "Motor [175] Drives and Control Cabinet" and various subheadings mean the various parts of the amplifier, pick up, motors, drives, etc. showing the condition of the various parts therein mentioned. [176]

Whereupon Witness Lawrence further testified on each occasion that I examined the talkie equipment in defendant's theatres in Juneau or Ketchikan I made a written report of the general conditions

(Testimony of Ralph E. Lawrence.)

as I found them in those respective theatres at that time; I made such a report when I visited defendant's Juneau theatre on September 11, 1930, of the general conditions that I found in the talkie equipment at that time and I served a copy of it upon defendant who signed for that report; I made a written report of my call at the Juneau theatre on September 16, 1930, and served it upon Charles Tuckett, manager, who signed for it; I made a written report of the general conditions that I found to exist in the talkie equipment in that theatre when I visited it on November 29, 1930, and delivered a copy of my report to Charles Tuckett, who signed for it; I made a written report of the conditions that I found in that theatre when I visited it on March 6 and 7, 1931, and I served a copy on Charles Tuckett, manager, who signed for it; I made a written report of the general conditions that I found in the talkie equipment in defendant's Ketchikan theatre when I visited it on October 11, 1930, and served a copy upon L. C. Lemieux, manager of that theatre, who signed for it; I made a written report of the general conditions that I found in the talkie equipment in that theatre when I visited it on November 2, 1930, and served a copy of it upon Ralph Bontrager, who was then operator at the theatre and who signed for it on behalf of L. C. Lemieux; I made a written report of the general conditions I found to exist in the talkie equipment in that theatre when I visited it

(Testimony of Ralph E. Lawrence.)

on February 26, 1931, and served a copy of it upon Frank L. Stannard, who was then manager of that theatre, and who signed for that report.

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Whereupon Witness Lawrence produced copies of said reports, so signed as above stated, which reports were thereupon received in evidence, and Juneau report of September 11, 1930, marked PLAINTIFF'S EXHIBIT No. 21-A, Juneau report of October 16, 1930, marked PLAIN- [177] TIFF'S EXHIBIT 21-B, Juneau report of November 29, 1930, marked PLAINTIFF'S EXHIBIT No. 21-C, Juneau report of March 6-7, 1931, two pages, marked PLAINTIFF'S EXHIBIT No. 21-D, Ketchikan report of October 11, 1930, marked PLAINTIFF'S EXHIBIT No. 21-E, Ketchikan report of November 22, 1930, marked PLAINTIFF'S EXHIBIT No. 21-F, Ketchikan report of February 26, 1931, marked PLAINTIFF'S EXHIBIT No. 21-G, the originals of which exhibits are made a part hereof as they cannot be reproduced in printing or type-writing.

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Whereupon Witness Lawrence further testified: I also made Appointment Call Reports but did not obtain a receipt for them from the defendant, although I always left a copy at the theatre; the Call Reports arose in this manner: in making a routine

(Testimony of Ralph E. Lawrence.)

inspection we would observe a certain work which had to be done and couldn't be done at that time; therefore I would go back to the theatre and do that work and originate one of these Appointment Call Reports in order to establish that I had actually done that work; these reports do not refer to the short calls that I made when I was in town only for an hour or two, but originated as I said when I observed certain conditions in making routine inspections which needed correcting, but were not corrected at the time of my original call and I corrected them later and these reports which I now produce were of the later time I spent on the job indicating that that work was done by me.

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Whereupon said written reports were received in evidence marked PLAINTIFF'S EXHIBITS Nos. 22-A, 22-B, 22-C, 22-D, 22-E, 22-F, and 22-G—, the originals of which exhibits are made a part hereof as they cannot be reproduced in print or type-writing.

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Whereupon Witness Lawrence further testified: These reports plaintiff's exhibits Nos. 22-A to 22-G, both inclusive, correctly represent work and various things that I did as shown thereon, in connection with the equipment in these two theatres; I made twelve actual reports altogether covering work on

(Testimony of Ralph E. Lawrence.)

these two theatres; I also called once or twice at the Juneau theatre for which I did not make any report which included the occasions when I went down to see the shows, but I do not think that occurred [178] at Ketchikan; I was familiar with the condition of the plaintiff's talkie equipment in defendant's two theatres on April 20, 1931, and each of those equipments on that date was in good condition except that they had had approximately two years' service and consequently had been worn some.

#### Cross Examination

Thereupon Witness Lawrence further testified: I don't remember seeing defendant's exhibit A for identification, or whether or not I ever served it upon Witness Tuckett, although I wouldn't say I didn't serve it, but I can't positively testify that I did.

Whereupon the following proceedings were had:

Q. To refresh your memory as to the date—there is no date on this paper I understand.

A. That is right.

Q. You remember the occasion when the attachment suit was brought against Mr. Gross?

A. Yes.

Q. And the occasion when his box office was attached?

A. Yes.

Q. And you remember immediately thereafter Mr. Gross put up a bond to release the attachment?



(Testimony of Ralph E. Lawrence.)

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial,—any attachment bond put up in the preceding suit is not within the issues of this case.

Mr. HELLENTHAL: No, Your Honor, but I am trying to fix the date.

The COURT: It is all set up in the pleadings.

A. Would you mind stating the occasion?

Q. Do you remember the occasion when Mr. Gross put up a bond to release that attachment?

A. I was told he did put up a bond; I didn't know it personally.

Q. You remember the time?

A. Yes.

Thereupon defendant withdrew his said exhibit A for identification, after witness Lawrence had testified that there was no signature on it and that he did not remember serving such [179] a paper; whereupon the following proceedings were had:

Q. How long was it after Mr. Gross had put up the bond in that case that you went to Mr. Gross' theatre and were refused admittance? Do you remember that?

Mr. ROBERTSON: If the court please, I object as incompetent, irrelevant and immaterial. There is no evidence in this case of any bond having been put up in the attachment

(Testimony of Ralph E. Lawrence.)

suit; and when it is offered we object as not within the case.

The COURT: My recollection is it was set up in the pleadings.

Mr. ROBERTSON: No, there is nothing in the case at all.

The COURT: Set up in the answer, as I recall it.

Mr. RODEN: No, Your Honor, there is no mention of that in the Answer at all in this replevin suit.

The COURT: In that case the objection will be sustained.

Thereupon, after further argument, the following proceedings were had:

The COURT: Go ahead.

Mr. HELLENTHAL: I am waiting for the witness to answer.

Mr. ROBERTSON: I thought the court sustained the objection.

The COURT: I do, so far as it goes to the attachment suit, with the understanding it isn't in the pleadings. My recollection is still to the contrary. I may be mistaken.

Mr. HELLENTHAL: What is the ruling of the Court?

(Last question read.)

The COURT: I think he may ask him the question with reference to fixing the time. The jury, however, will be instructed that they are

(Testimony of Ralph E. Lawrence.)

not to take into consideration anything pertaining to the attachment suit. I understand now it is not any part of the issues in the case.

Mr. RODEN: There is nothing to show an attachment bond was put up or this witness knows when an attachment bond was put up.

The COURT: The witness can answer that.

A. It is my recollection that I was barred from the booth before the attachment proceedings came up.

Thereupon Witness Lawrence further testified: That is my recollection, by referring to my diary I could tell; I have no recollection of that particular paper although I remember serving a paper, but I couldn't identify that as it; I knew the purpose [180] of the paper but didn't know what it said; the various component parts of the talkie equipment, if not handled carefully, are apt to get out of adjustment; a number of those parts are liable to get out of adjustment or repair at any moment; some of those parts would last a long time but the sound units and amplifier equipment should be handled carefully; some of the parts wear out more quickly than others; I didn't ever make an inspection of the equipment either in defendant's Juneau or Ketchikan theatres of such scope as embraced in the entire inspection examination that I described; I was service engineer in Seattle from January 1, 1930, until about April 1, 1930, working under Witness Briggs and I serviced about fifteen

(Testimony of Ralph E. Lawrence.)

suburban theatres without any assistance; I didn't service or inspect those theatres once a week.

Whereupon the following proceedings were had:

Q. Did you go to them on emergency service calls?

A. I only remember one emergency I had while I was in that territory, and I didn't go to that alone.

Q. You took another man with you?

A. I had two men with me.

Q. Where was that emergency call from?

A. The Cherio Theatre, on Queen Anne Avenue in Seattle.

Q. What time of day did that come?

A. Nine-thirty at night.

Q. Did you respond at once?

A. Yes.

Q. The operators there had your telephone number?

A. Yes.

Q. When the trouble occurred, all they had to do was to telephone you?

A. Yes.

Thereupon Witness Lawrence further testified: During the time that I was in Alaska I inspected one theatre in Ketchikan, [181] two in Juneau, one in Cordova, one in Anchorage, one in Fairbanks, and one in Prince Rupert, Canada, but the latter was not turned over to me until after plaintiff's equipment was replevined from defendant's theatres.

(Testimony of Ralph E. Lawrence.)

Whereupon the following proceedings were had:

Q. I am asking how you went about to go from one theatre to another.

A. I traveled by boat and trains.

Q. Where did you start from? Did you have a routine where you started in going about these theatres,—a regular schedule, reasonably regular?

A. Yes.

Q. Where did you start?

A. When I first came to Alaska first was the Coliseum in Juneau. From it I went to Fairbanks and worked south.

Q. You went direct to Fairbanks from Juneau?

A. Yes.

Q. In going to Fairbanks you cross the Gulf of Alaska?

A. Yes.

Q. Going to Cordova?

A. I worked Cordova on the way south.

Q. The steamer goes to Cordova?

A. Yes.

Q. Then Valdez?

A. Sometimes, sometimes it didn't.

Q. Sometimes to Seward?

A. Yes.

Q. That is the end of the steamer route?

A. Yes.

(Testimony of Ralph E. Lawrence.)

Q. How long did it take to go from Juneau to Seward by steamer, I mean the ordinary schedule?

A. I would say about three days. [182]

Q. From Seward you took the Alaska Railroad to Anchorage?

A. I took the railroad to Fairbanks.

Q. You went through to Fairbanks, that was your schedule?

A. That is right.

Q. How many trains a week does that road run from Seward to Fairbanks?

A. In the winter time one a week, in the summer there was a time when there were two a week; last summer they ran a gas car from Seward to Fairbanks.

Q. Did the gas car run all the way from Seward to Fairbanks?

A. Yes.

Q. Regular trains ran in the winter time one a week, and in the summer two a week although the regular schedule called for one a week?

A. The second train only went to McKinley Park, not all the way to Fairbanks.

Q. There was only one train a week from Seward to Fairbanks either winter or summer?

A. I could ride the freight from Fairbanks to Healey.

(Testimony of Ralph E. Lawrence.)

Q. I am speaking of passenger trains only; one passenger train from Seward to Fairbanks?

A. In winter, yes.

Q. In summer?

A. So far as I know there was, yes.

Q. So far as you know in summer there was only one?

A. Yes.

Q. There was an extra train in the summer that went as far as McKinley Park?

A. Yes.

Q. You could possibly, on some occasions when there was a freight train, get it from Fairbanks to McKinley?

A. There was always a freight train leaving the day after the [183] passenger left.

Q. How close connections could you make on that freight train with the McKinley Park train in the summer?

A. I am unable to testify that. As a matter of fact during the summer time on what they call the "Golden Circle" there was passenger traffic that ran from Seward and went to Fairbanks, that passenger service extended down and made connections with the McKinley Park train.

Q. That was only for a short period of the year that that went on?

A. That was in the summer time.

Q. While the excursion season was on?

A. Yes.

(Testimony of Ralph E. Lawrence.)

Q. How long did it take the train to get from Seward to Fairbanks?

A. Two days.

Q. Two days?

A. Yes.

Q. That was if nothing happened in the summer?

A. Well, that is what the schedule was; you left Seward at 7.30 in the morning, get into Curry that night, leave Curry the next morning, get into Fairbanks at 5.30 the next night.

Q. That is the schedule of the railroad—leave Seward at a certain time and get into Fairbanks two days later?

A. Yes.

Q. In the winter time those trains were often off schedule, were they not?

A. Not often: there were one or two occasions they were.

Q. Many snow slides on the road?

A. They used to have snow slides, yes.

Q. And citizens had to adjust themselves with reference to the time, as to what happened in connection with those [184] snow slides?

A. Yes.

Q. The snow slides had to be cleared away and sometimes it took a long time to get from Fairbanks to Seward, isn't that true?

A. I only had one experience of that sort; I didn't use the train and flew.



(Testimony of Ralph E. Lawrence.)

Q. At that time, however, there was no air-plane service across the Gulf?

A. No.

Q. No way to fly from Seward to Juneau?

A. Unless you chartered a plane.

Q. Ever hear of anyone chartering a plane in 1929 or 1930 to cross the Gulf of Alaska.

A. Yes.

Q. Who?

A. Harry Morton, at Anchorage, at one time started out with Frank Dorbrandt to come down that way.

Q. When was that?

A. I couldn't establish the date.

Q. That was not in 1929, 1930 or 1931?

A. Yes, it was.

Q. Isn't it a fact that the first plane crossed the Gulf of Alaska very much later than that?

A. I am not in a position to establish when the first plane crossed. I understood it was some time previously that Russell Miller flew a plane into Cordova.

Q. Anyhow there were no airplanes crossing the Gulf at that time?

A. No regular schedule, no.

Q. Very few crossing at this time?

A. I don't know.

Q. Isn't it a fact airplanes don't cross in the winter time [185] at all, either now or then or at any other time?

(Testimony of Ralph E. Lawrence.)

A. I couldn't say it is a fact, I don't know it.

Q. You never heard of an airplane crossing in the winter time, did you?

A. I don't know, it seemed to me I read in the paper when I was outside along about the time this strike was on, at the time of the fire in Nome there were some people flying out. I can't prove that; I just read it in the paper.

Q. Neither of those instances, however, were in the winter time, were they?

A. I couldn't say.

Q. The fire in Nome was in the Fall, in the later summer?

A. So far as I know, it was.

Q. And the strike was in the spring and summer?

A. Yes.

Q. You never heard of an airplane crossing the Gulf of Alaska in the winter time?

A. No, I wouldn't say they crossed in the winter time.

Q. In any event you never crossed the Gulf of Alaska in an airplane yourself to make service for Mr. Gross or anybody else?

A. No.

Q. After you got to Fairbanks what did you do?

A. Whatever it was required to do up there I did.

(Testimony of Ralph E. Lawrence.)

Q. You inspected the theatre there, didn't you?

A. Yes.

Q. How long after the arrival of the train did the train go back?

A. As I remember it, the train got in there on a Friday night and we left the following Thursday morning.

Q. Then it was a week between trains that you had to wait at Fairbanks, or six days? [186]

A. Yes, six days.

Q. During that six days did you keep in touch with Mr. Gross or his manager at either of these theatres?

A. What do you mean—keep in touch?

Q. Write them, or wire them or tell them where you were?

A. There was no percentage in writing. I would get there as soon as the letter.

Q. Did you wire?

A. No.

Q. Never kept them informed where you were?

A. They knew where I was.

Q. How did they know?

A. I was in the habit of keeping a schedule. As a matter of fact I made only three trips before Mr. Hurlbert came in. He was in Ketchikan in January and part of February, and during that time I was not responsible for servicing those equipments.

(Testimony of Ralph E. Lawrence.)

Q. During that time you were out of the Territory?

A. I was over in the Interior and Southwestern Alaska.

Q. You had nothing to do with servicing the equipment?

A. During that period I didn't service equipment.

Q. Mr. Hurlburt was here installing equipment in Juneau and Ketchikan?

A. Juneau and Ketchikan.

Q. Opposition equipment to Mr. Gross?

A. I don't know about that.

Q. Installing your equipment in the new theatre in Ketchikan and one in Juneau?

A. Yes.

Q. That is how he happened to be here?

A. Yes.

Q. While he was here doing that he serviced Mr. Gross' theatres? [187]

A. Yes.

Q. Did he make any visits to the Interior?

A. No.

Q. On the way back you left Fairbanks and went to Anchorage?

A. Yes.

Q. How long did you remain in Anchorage?

A. Until the next train left.

Q. That would be a week, wouldn't it?

A. Usually; depends on the boat schedules; the trains meet the boats.

(Testimony of Ralph E. Lawrence.)

Q. According to the train schedules it would be a week?

A. Yes.

Q. You couldn't get out of Anchorage for a week?

A. Not unless I wanted to fly, no.

Q. Did you ever fly?

A. I flew once from Cordova to Anchorage.

Q. You flew once to Cordova?

A. No, once from Cordova to Anchorage; that was the period I mentioned,—the time the railroad was stuck while I was there I flew from Cordova to Anchorage and on to Fairbanks.

Q. You have done that much flying in your experience?

A. No more than that.

Q. No, I mean your flying experiences over there.

A. As a matter of fact all this flying occurred after these equipments were removed; there was no train tie-ups during the time I serviced Mr. Gross' equipments.

Q. No what?

A. No train tie-ups after—during the time I serviced Mr. Gross' equipments.

Q. You did no flying during the time you serviced Mr. Gross' equipment?

A. During the time I serviced Mr. Gross' equipments the trains were not tied up; it was not necessary to use an [188] airplane.

(Testimony of Ralph E. Lawrence.)

Q. During that time you were able to travel on the trains?

A. Yes.

Q. In any event you didn't use any airplanes?

A. No.

Q. After you spent a week in Anchorage and took the train you went to Seward?

A. Yes.

Q. And the question of how long you had to remain at Seward would depend on whether there was a boat to take you out?

A. No, the boat was always there.

Q. The steamship company aimed to connect with that train?

A. That is right; they coordinated the schedules at Seward.

Q. If there had been no boat there you would not have been able to get a boat out but the steamship company and the railroad company cooperated and had the boat there?

A. The boat was always there.

Q. There, always, when you were there?

A. Yes.

Q. You wouldn't testify the boats are always there when the train arrives at Seward?

A. I could testify to only what I know, that is what occurred during the time I was traveling there.

Q. How long did it take you to get from Anchorage to Seward?

A. About half a day.

(Testimony of Ralph E. Lawrence.)

Q. Is that railroad always in repair?

A. Yes.

Q. Winter and summer?

A. Well, barring a few cases where the engine slips off the track or something it is always in good shape.

Q. That isn't such an unusual happening on the Alaska Railroad, is it?

A. I don't know; I only was up there a year or two. I can't [189] say whether it was or not.

Q. Except the times when the engine slips off the track or the track is out of repair or something the train takes about half a day from Anchorage to Seward?

A. Five hours.

Q. After you left Seward where did you go by steamer?

A. Cordova.

Q. How long did that take you?

A. Depends on the boat; some were a little faster than others. I would say it was on an average about, you might call it, a full day.

Q. Then you stopped off at Cordova?

A. Yes.

Q. How long did you stay there?

A. A week.

Q. Until the next boat?

A. Yes.

(Testimony of Ralph E. Lawrence.)

Q. There would be no way for you to get out of there for a week as a rule?

A. Coming this way?

Q. Yes, coming this way.

A. That is right.

Q. From there where did you go on the boat?

A. I would usually go to Ketchikan.

Q. How long did it take you to get to Ketchikan from Cordova?

A. Well, the "Yukon", if the gulf was pretty good, 32 hours to Juneau and depending on the tide at Wrangell Narrows, check another day from Juneau to Ketchikan.

Q. The Gulf of Alaska is often very rough, isn't it?

A. In the winter time. Hard to say. It is rough to some people and it isn't so rough to others.

Q. There is a pretty good sea running in the Gulf of Alaska at times? [190]

A. I have seen it kick up a little bit.

Q. Sometimes ships don't make good time crossing the Gulf?

A. No.

Q. If everything was all right, fair weather, you could make the time you testified?

A. No, I specified the "Yukon"; the "Alameda" and the "Northwestern" didn't do quite as well. There were several others. The "Alameda" is burned.



(Testimony of Ralph E. Lawrence.)

Q. The "Alameda" and "Northwestern" were much smaller than the "Yukon"?

A. The "Northwestern" is smaller.

Q. You had another difficulty to contend with and that is Wrangell Narrows?

A. Yes; I didn't contend with it, but it is a difficulty.

Q. I know, you didn't run the ship?

A. No.

Q. You were just a passenger?

A. Yes.

Q. But anyhow, Wrangell Narrows delayed the ship at times?

A. Yes.

Q. Ships can only pass through when the tide is full?

A. I don't know; I am not a navigator; I just went with them.

Q. You do know sometimes you had to wait for the tide at Wrangell Narrows?

A. I presume so; they would go to Wrangell or Petersburg; maybe working cargo, maybe not.

Q. There were times when you were on the ship that you went into Petersburg and lay there a long time?

A. Occasionally they would lay there over night, yes. I don't believe it occurred more than once in my experience going south, and probably once or twice coming north, during

(Testimony of Ralph E. Lawrence.)

the time I was serving Mr. Gross' equipment. [191]

Q. Then you went to Ketchikan?

A. Yes.

Q. How long did you stay there?

A. A week.

Q. Go to Prince Rupert in the meantime?

A. I wasn't going to Prince Rupert at the time we have reference to, at the time I was servicing Mr. Gross' equipment. I took over that house in June, 1931, subsequent to the removal of this equipment.

Q. How many steamers a week were there between Seward and Juneau?

A. How many steamers a week?

Q. Yes.

A. Well, at that time the "green" boats were running over there, and one boat a week on the Alaska line, is about every third week there were two.

Q. Every third week, otherwise one a week?

A. Yes.

Q. That was about the schedule in South-eastern Alaska waters, also, was it not?

A. No, there was more transportation down here; you have the "Northland", "Norco", all the "green" boats and the Canadian Pacific.

Q. You couldn't travel on the Canadian Pacific between American ports?

A. No.

(Testimony of Ralph E. Lawrence.)

Q. But the service between Juneau and Ketchikan was somewhat better than between Juneau and Cordova and Seward?

A. Yes.

Q. Steamers more frequently?

A. Yes.

Q. You would not be able to say how often you could get from [192] Juneau to Ketchikan or Ketchikan to Juneau?

A. No, I would just look at the steamers and ride them, the boats.

Q. Now then, sometimes there were two boats a day and sometimes not a boat for a week, isn't that true?

A. I presume so, yes.

Q. In the winter time there would be times you wouldn't have a boat between Ketchikan and Juneau—where you would not have a boat for ten days or two weeks?

A. I don't remember a time when it was necessary to wait ten days in either Juneau or Ketchikan in order to secure transportation between those two ports.

Q. There was usually transportation in a somewhat shorter length of time?

A. Yes.

Q. You, however remained in Ketchikan about a week?

A. Yes. I liked to ride the Alaska line boats better than the others, and to be on the safe side—it would be at least three or four days.

(Testimony of Ralph E. Lawrence.)

Q. You would have to wait that long to get an Alaska line steamer?

A. Yes.

Whereupon Witness Lawrence further testified: Some adjustments in the talkie equipment would be checked and at least tested every day; there are some minor adjustments, such as checking the focus of the exciter lamp and whether or not the horns were operating that was part of the routine we taught the operators when we put the equipment in, the horns and the matter of checking the exciter lamps; adjustments have to be made in any sound system all the time; I don't know what adjustments defendant's men made when I was not here; I made an endeavor to instruct them as much as I could.

Whereupon the following proceedings were had: [193]

Q. It isn't necessary that this equipment should be cared for by a trained engineer is it?

A. Yes.

Q. It is necessary?

A. Yes.

Q. It always has been necessary?

A. Yes.

Q. And still is necessary?

A. Yes.

Q. At the present time do you send any trained engineers to inspect the equipment at all?

(Testimony of Ralph E. Lawrence.)

A. I have a group of theatres in southern Oregon and northern California, I service all of them.

Q. How is that?

A. I have a territory down in southern Oregon and northern California on which I do my service work all the time.

Q. Don't you sell the equipment outright at present?

A. No.

Q. Doesn't your outfit sell equipment to operators?

A. I don't know what the policy of the company is. I only have certain things to do and do them; I don't know anything about the contracts.

Q. Don't you know as a matter of fact all the theatre equipment in Juneau is owned by the people that operate it, outright?

A. I don't know about that situation.

Q. You don't know your company is now selling equipment to the operators?

A. No, I don't know anything about it.

Q. You don't know the company gives them no service or inspection at all at present?

A. I couldn't tell as to the amount of service that they get, if any. [194]

Q. You don't know these theatres in Juneau are now operating without any help from your company at all?

(Testimony of Ralph E. Lawrence.)

A. I know we had service men up here last summer; that is all I know definitely about it, because I am located in a remote area and my contacts with Alaska's situation are practically nil.

Q. Don't you know at this time your company is now selling these outfits for \$1900.00?

A. No, I don't know.

Q. You don't know that?

A. In our organization we have a sales department that handles that, and my department doesn't do any selling.

Q. You don't know that?

A. No, that is not our function.

Q. Wasn't it part of the policy of your operating department during the year 1930 to keep an engineer within call all the time?

A. Where do you mean—in Alaska?

Q. Everywhere.

A. Well, in my territory I always leave a schedule where I will be, so they can contact me.

Q. Did you always leave a schedule with these boys in Juneau and Ketchikan telling them where you would be on a certain day?

A. I can't say that I did.

Q. Wasn't it the policy of your company—you are acquainted with its affairs—to keep an engineer always on call for emergencies during theatre hours?

A. On every installation we had a card which had the number of the Seattle office and

(Testimony of Ralph E. Lawrence.)

it specified it was there for emergency service.

Q. Anytime anybody got into trouble in the theatre at any hour they could call a service man? [195]

A. That was the object.

Q. That was the kind of service they got wasn't it?

A. I presume so.

Q. It is also true that your service department made an inspection of each theatre in Seattle, for instance, each week? Isn't that true?

A. No.

Q. That isn't true?

A. No.

Q. How often did they make them?

A. Depends on the theatres.

Q. Depends on the theatres?

A. Yes.

Q. How often did you make your inspections?

A. In what theatres?

Q. In those theatres you were inspecting at the time that you were there.

A. Each two weeks.

Q. You were always on call, they had your telephone number so if they had trouble you could go fix it?

A. Yes.

(Testimony of Ralph E. Lawrence.)

Whereupon Witness Lawrence further testified: These two papers that counsel now hands me appear to be plaintiff's advertisements.

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Whereupon excerpts from two papers were received in evidence, marked

DEFENDANT'S EXHIBITS B AND C, respectively, and read as follows: [196]

### EXHIBIT B.

#### EXHIBITORS HERALD-WORLD.

September 6, 1930

#### ASK THESE

#### 15 QUESTIONS

before you buy your new sound equipment!

- 1 WILL I GET REGULAR SERVICE by thoroughly trained engineers to maintain high quality and prevent costly break-downs?
- 2 HAS THE COMPANY ENOUGH INSTALLATIONS to support an efficient nation-wide service organization for the 10 year life of the contract?
- 3 HAS THE EQUIPMENT AT PROVED PERFORMANCE RECORD of less than one interruption per thousand shows in several thousand theatres?
- 4 WILL A REAL STOCK OF SPARE PARTS BE AVAILABLE nearby and a service engineer on call for immediate emergency service during all theatre hours?



(Testimony of Ralph E. Lawrence.)

- 5 WILL THE PATRONS OF MY THEATRE BE SATISFIED THAT THE QUALITY of reproduction is the best and equal to that in deluxe theatres?
- 6 WILL I GET ENGINEERING SUPERVISION of my installation equal to that in deluxe theatres?
- 7 HAS EQUIPMENT BEEN DESIGNED to reproduce the high quality recording of the best pictures?
- 8 HAS THE COMPANY THE RESOURCES to carry on a large program of research and development to assure constant improvement in recording and reproducing and provide mechanical and electrical devices for future developments in the amusement field?
- 9 WILL MY CONTRACT PROTECT ME by immediate free replacements in case of fire?
- 10 HAS THE COMPANY THE STABILITY to adequately protect me on all patents?
- 11 HAS THE COMPANY A UNIFORM POLICY and contract for every exhibitor?
- 12 WILL I HAVE ACOUSTICAL ENGINEERING ASSISTANCE to correct structural and other acoustical defects?
- 13 WILL I GET ADVERTISING ACCESSORIES to cash in on a manufacturer's name popularized by national advertising?
- 14 WILL I BE ABLE TO ARRANGE EASY TERMS so I can pay out of box-office receipts stimulated by quality performance?

(Testimony of Ralph E. Lawrence.)

- 15 WILL MY EQUIPMENT BE AN INVESTMENT paying dividends over a period of 10 years—or will I—like 2,000 other exhibitors—soon have to replace it to meet the competition of better quality?

WESTERN ELECTRIC  
THE  
SOUND VOICE SYSTEM  
OF  
ACTION

Northern Electric in Canada, Distributed by ELECTRICAL RESEARCH PRODUCTS INC. 250 W. 57th Street, New York. [197]

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EXHIBIT C

EXHIBITORS HERALD WORLD

December 27, 1930

ERPI SERVICE enables  
you to get everything out of . . .

WESTERN ELECTRIC  
NEW  
PROCESS  
NOISELESS RECORDING

NOISELESS RECORDING marks the greatest advance since the coming of talkies. This new delicate, scientifically developed apparatus for recording produces a result heretofore impossible—keeping out all noises resembling static—producing tones more clear-cut and life-like.

(Testimony of Ralph E. Lawrence.)

YOUR PRESENT WESTERN ELECTRIC EQUIPMENT will successfully handle these new process films without any added parts—another evidence that best results are obtained when the same make of recording and reproducing apparatus is used.

TO OBTAIN THE FULL BENEFITS of the New Process, the most minute adjustments are required to silence the reproducing equipment and maintain high quality.

AS PART OF THE REGULAR ERPI SERVICE, Western Electric equipped theatres will have skilled engineering assistance at no extra cost to bring the apparatus up to these new high standards—to get everything possible out of pictures made by the wonderful new Noiseless Recording.

WESTERN ELECTRIC EQUIPMENT—ERPI'S SERVICE—continued improvement in methods and apparatus—are all part of the policy of making available facilities that will make your investment in them pay real dividends.

WESTERN ELECTRIC  
THE  
VOICE  
SOUND OF SYSTEM  
ACTION

Northern Electric in Canada

ELECTRICAL RESEARCH PRODUCTS INC.

250 West 57th St., New York

(Testimony of Ralph E. Lawrence.)

Thereupon Witness Lawrence further testified: Plaintiff's service policy was to keep an engineer as much as possible within constant call and that was the service that plaintiff rendered under its contracts; I don't know where the ground in the defendant's Juneau theatre is located; I recall where the ground was [198] located in defendant's Ketchikan theatre.

#### Redirect Examination.

Thereupon Witness Lawrence further testified: I can't remember the ground in every theatre that I have inspected; I believe I inspected the ground at the Juneau theatre once; during the time that I was inspecting defendant's theatres there was a supply of spare parts kept in the Coliseum theatre in Juneau and we had a regular spare parts list which was kept in Ketchikan and Juneau; in addition we had an emergency 41-A amplifier and 42-A amplifier which were maintained by plaintiff in those theatres for the purpose of preventing shut-downs; I know nothing about the terms of plaintiff's contracts other than they specify periodical services, as those contracts are no part of my duty and I have nothing to do with them; during the period that I was making inspections in Alaska I was never delayed or held up at any time in making my regular routine calls at either of defendant's two theatres by reason of any train delays or steamer wrecks or delays. I think that the management or the operators of the Juneau Theatre knew my whereabouts,

(Testimony of Ralph E. Lawrence.)

where I could be reached, when I was either in Juneau or Ketchikan. I think they knew that because I only had five stops to make and after I had been making them for quite a while they became familiar with the fact that I went directly from Juneau to Fairbanks and I believe they were quite familiar with the fact that boats to the westward ran once a week and the train schedule meets the boats and that I would have to remain in Fairbanks for the next train and also remain in Anchorage after arriving there, for the next boat, and also the same in Cordova; during the time that I was absent in Western Alaska I never received any letters, telegrams or other calls from defendant, asking me to return for emergency inspection or examination; approximately ninety per cent of the value of periodical examinations and check-ups of the equipment in the two theatres lies in prevention of emergencies, rather [199] than overcoming them when they actually occur, and that is what the periodical inspection presumes to take care of; it is possible but not probable, that some part of the equipment may go off during operation of a show; that never happened during the time that I was inspecting defendant's theatres; I don't remember their having any reports to make due to any shut-downs on that account—the show shutting down and the necessity of refunding any money on that account; while I was inspecting the equipment in

(Testimony of Ralph E. Lawrence.)

defendant's theatres I never found it necessary to do each inspection item that I previously described in my evidence, and I don't claim that I ever made that entire examination or inspection at any one time of that equipment. [200]

#### Re-Cross Examination

Thereupon Witness Lawrence further testified: I made those inspections with the view of preventing breakdowns; my work amounted to more than that, though; periodically we received engineering information from our Engineering Department of new discoveries and improvements and we put those into effect in the equipments in the theatres we were servicing, having a regular service of information of that sort forwarded to us and it was our duty to see that those new devices were installed in those theatres if we could sell the defendant on the idea; I would not on every trip find something that defendant was called upon to order, but I took his order for whatever he determined was necessary and he paid for the spare parts, although there are certain items in his theatres for which he did not have to pay, for instance, modification parts for the hold-back mechanism, which is an important device and which we established and installed; that was part of our service; I can't remember all the detail of what he did pay for and what he didn't pay for; I know he ordered replacements for two or three photo-electric cells at each installation,

(Testimony of Ralph E. Lawrence.)

which he did not pay for and which cost about \$15.00 apiece; I don't remember defendant ever sending any parts to Seattle and having them repaired and bill for repairs being sent to him; I do not know that defendant had a lot of trouble with the equipment when I was away from here; there was only one instance called to my attention concerning any difficulties experienced. These periodical trips were made by me from month to month just as I described them; I went to Ketchikan and Fairbanks, and all the others I have mentioned as near as the schedules of the boats and trains would permit.

#### Re-Direct Examination

Whereupon Witness Lawrence further testified: I didn't have anything to do with collecting money from defendant except one time I contacted him with reference to a payment; I don't know whether he paid for additional spare parts or not, I just talked to him about one item; it is my understanding that he didn't pay for them, but I don't know that; defendant's operators reported to me no troubles, nothing more than cleaning the fader or replacing a tube that had become defective or something like that. [201]

## HERBERT M. WILCOX

Herbert M. Wilcox, plaintiff's witness, being first duly sworn testified:

## Direct Examination

I am now and have been vice-president of plaintiff since April 16, 1926, prior to which I was operating manager; I am personally familiar with the talkie equipment, the subject of this controversy, formerly situated in defendant's Juneau and Ketchikan theatres; I know Harry Taylor who formerly was an installation and service engineer of plaintiff and who installed those equipments in those theatres; he left Alaska July 15, 1929; while he was in Alaska he made service inspection reports covering those theatres, copies of which reports were acknowledged as having been received by defendant at his Ketchikan theatre by Charles M. Tuckett, and at his Juneau theatre by L. C. Lemieux; I now produce those reports.

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Whereupon routine service covering defendant's Ketchikan Theatre, dated July 12, 1929, was received in evidence marked

PLAINTIFF'S EXHIBIT No. 23-A,  
and routine service report covering defendant's Juneau Theatre, dated July 15, 1929, was received in evidence marked



(Testimony of Herbert M. Wilcox.)

PLAINTIFF'S EXHIBIT No. 23-B,  
the originals of which exhibits are made a part here-  
of as they cannot be reproduced in typewriting or  
printing.

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Thereupon Witness Wilcox further testified: I know the established value of each of those equipments on April 20, 1931, was \$6,600.00.

#### Cross Examination

Thereupon Witness Wilcox further testified: That valuation does not necessarily mean sales value, nor rental value for the balance of the term—I mean its arbitrary value that was established for equipments of that type that were returned from the field, determined by deducting certain factors from the original rental value; I do not mean value to plaintiff or market value or rental value, but the arbitrary valuation placed by plaintiff upon [202] it; the replacement value at that time was much less; the present price on equipment of that type, cash price, I think is around \$3,100.00; I know that in March, 1931, the 3-S equipment, which was a more modern and simplified equipment than the equipments in controversy, but which was equivalent in so far as functioning in theatres the size of defendant's, was put on the market at a price of \$3,750.00; plaintiff did not sell them outright but leased them at that price with an additional service charge, at that time, as I

(Testimony of Herbert M. Wilcox.)

recall it, of \$29.75 a week in the United States for the first six months, \$25.00 for the second six months, and \$20.00 a week thereafter for the term of ten years; shortly after that time the price was reduced \$5.00 a week; plaintiff still services machines and does not sell machines outright to theatres; there is now one machine in Juneau equipped with Western Electric equipment but it is on a rental basis and was not purchased for \$1,900.00, but there are no service charges; if the exhibitor sends for a service man he pays for it; plaintiff did not under the old system service machines once a week; in the beginning for the first six months of operation in 1929 and 1930 we serviced once a week for the first six months; when I say a week it might have been eight days one time and six another, but approximately every ten days; the second six months and thereafter, approximately every two weeks with the exception of very large de luxe houses, with a seating capacity of upward of 1,500 seats of which there were about 150 in the United States, which were serviced every week; plaintiff also furnished a service man day or night on call whenever the theatre was running; the operator had nothing to do if anything was wrong except to call the office and get a service man right away; whereupon the following proceedings were had:

Q. Besides that the various parts of the machine were sealed, so no one except a service man could touch them?

(Testimony of Herbert M. Wilcox.)

A. Only a few parts were sealed.

Mr. ROBERTSON: Object as not proper cross examination. [203]

A. There was one part that was sealed.

Q. No other part sealed?

A. No.

Q. On any machines?

A. Not so long as the account was in good standing and the equipment in operation; there was only one part sealed.

Whereupon Witness Wilcox further testified: Only one part of the equipment was sealed so that the operators couldn't fool with it; the contract contained the provision that no "seals" could be broken which applied to sealing up equipment so that it could not be used. It had nothing to do with the use of equipment in a theatre when the account was in good standing and bills paid; it was not our custom to seal them everywhere.

Whereupon the following proceedings were had:

Q. Mr. Wilcox, you were here in Juneau during the time that the machines were installed, or after they were installed?

A. I was here for six hours July the 13th, 1929.

Q. Do you recall meeting Mr. Gross at that time?

A. I met Mr. Gross at that time.

Mr. ROBERTSON: Object as not proper cross examination.

(Testimony of Herbert M. Wilcox.)

The COURT: No, it isn't proper cross examination.

Mr. HELLENTHAL: I wish to impeach the witness, Your Honor—laying the foundation.

The COURT: Very well.

Q. At that time did you have a conversation with Mr. Gross?

A. I did.

Q. Did you meet Mr. Gross at the theater?

A. I did.

Whereupon Witness Wilcox further testified: Taylor was present but I don't remember the names of any of defendant's employees who were present; I was in the operating room of the theatre; I did not say at that time that defendant had no service at his theatre and made no such statement to defendant or Taylor.

Whereupon the following proceedings were had:

[204]

Q. You didn't tell Mr. Gross if he should need somebody he could send to Seattle and pay for the service as he needed it?

Mr. ROBERTSON: Object as not proper cross examination. They have no right to prove their case on our cross-examination.

The COURT: He is adopting him as his own witness now.

A. What was the question?

Q. You never made any such statement, in which you told Mr. Gross that if he got in

(Testimony of Herbert M. Wilcox.)

trouble he could send to Seattle and pay for the service man that came up?

A. I told Mr. Gross in the event of an emergency, a man could be procured from Seattle by airplane.

Q. And Mr. Gross would pay the man for coming?

A. Mr. Gross would pay the extra charges for transportation by plane.

Whereupon Witness Wilcox further testified: I remember distinctly that I did not tell him that he would pay the man for coming; I dictated a memorandum of that conversation in October, after returning to New York, because I thought it was important as defendant had written a letter to plaintiff's general sales manager, making certain statements in respect to our conversation there; there was not a big demand for talkie equipment at the time these particular equipments were replevined; 22,000 theatres did not in April, 1931, demand such equipments; the maximum number of theatres I ever heard of in the United States was 15,000 to 18,000; in 1926, when we surveyed the market for the possible maximum number of installations, the best information we could get was that there were about 18,000 motion picture theatres in the United States and we figured the limit of a possible market was about 9,000 theatres for talkie equipments; there were fewer theatres in 1931 than in 1926; I don't know how many picture machines

(Testimony of Herbert M. Wilcox.)

were waiting for sound equipment in 1931 that couldn't be supplied.

#### Redirect Examination

Thereupon Witness Wilcox further testified: My conversation with defendant in the summer of 1929 was to the effect that Taylor had been in Juneau and Ketchikan continuously from the time he came up here to make the installations; that the installations had been made and the equipments were running satisfactorily; that he had [205] instructed Gross' employees in the operation of the equipments and he could be withdrawn from Juneau and Ketchikan permanently and thereafter the equipments could be serviced from Seattle and, in case of emergency, a man could come from Seattle by airplane with that extra transportation expense at defendant's cost, but plaintiff would pay for the man's salary; there was much less demand for talkie equipment on April 20, 1931, than in 1930 and 1929 and there was a slight decrease in the number of motion picture theatres actually operating; the equipment in the de luxe houses that I mentioned was much more powerful, larger and more complicated than the equipments in defendant's theatres; plaintiff has never sold outright this kind of equipment to theatres, but it did to Government institutions which could not lease the equipment, but to no one else; the valuation of \$6,600.00 placed by me upon each of these equipments on April 20, 1931, is

(Testimony of Herbert M. Wilcox.)

based upon the factors that parts of those equipments could not be used again, that parts are attached to the theatre and cannot be removed, cost of installation, and no longer any market for the disc reproducer as by that date the industry had adopted the film method of recording and reproducing as standard. [206]

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### R. H. PEARSALL

R. H. Pearsall, plaintiff's witness, being first duly sworn testified:

#### Direct Examination

I am assistant credit manager, with headquarters in Los Angeles, of plaintiff's Western Division, which comprises California, Oregon, Washington, Montana, Wyoming, Idaho, Nevada, Arizona, Hawaii, and Alaska, which position I have held since December 1, 1929, prior to which I was in the office of the operating department; plaintiff's Los Angeles office kept records of defendant's accounts in respect to his Juneau and Ketchikan theatres during the time that the equipments were in those theatres, which accounts were kept separately, and all monies paid by defendant upon either of those accounts were paid into the Los Angeles office; I am personally familiar with those accounts, and it was my duty to see and know that they were correctly kept; I now produce the original entries of those accounts

(Testimony of R. H. Pearsall.)

of those two theatres which were either made by myself or under my direct supervision covering defendant's payment of service charges and for merchandise.

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Whereupon plaintiff's original entries of account were received in evidence marked Plaintiff's Exhibits Nos. 24-A and 24-B, respectively, with authority to substitute photostatic or certified copies in lieu thereof.

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Thereupon Witness Pearsall further testified: Defendant was billed the weekly service charge of \$29.75 for his Juneau Theatre for the period of May 12, 1929, through March 7, 1931, and he paid those weekly service charges for the period from May 12, 1929, through May 24, 1930, fifty-four weeks, a total of \$1,606.50 for that theatre, and he was also billed for additional or spare parts equipment for \$148.36 of which he paid \$119.27, leaving \$29.09 unpaid; no charge was made against him for the amplifiers and spare parts that plaintiff held as stock in Juneau and he made no payment upon them; the list installation charge of those amplifiers held in reserve in Juneau, was around \$250.00 apiece; I now produce invoices and shipping orders, for this additional and spare parts [207] equipment, for which defendant receipted.



(Testimony of R. H. Pearsall.)

Thereupon said invoices and orders were received in evidence, marked Plaintiff's Exhibit No. 25.

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Whereupon Witness Pearsall further testified: The spare parts and additional equipments shown in Plaintiff's Exhibit No. 25 were billed to defendant at plaintiff's established list installation charges; defendant was billed for the weekly service charge of \$29.75 for his Ketchikan theatre from May 26, 1929, through March 7, 1931, and he paid those weekly service charges for the period of May 26, 1929, through May 27, 1930, Fifty-two weeks totaling \$1,547.00, and made no other payment thereon; additional or spare parts equipment was billed to defendant on account of his Ketchikan theatre at plaintiff's established list installation charges totaling \$207.64, of which he paid \$145.72, leaving \$61.92 no part of which he ever paid; plaintiff has the original orders for that spare parts and additional equipment and his receipts therefor, signed by defendant or his manager, which I now produce.

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Whereupon said orders and receipts were received in evidence marked Plaintiff's Exhibit No. 26.

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Thereupon Witness Pearsall further testified: In addition to the additional or spare parts on plain-

(Testimony of R. H. Pearsall.)

tiff's Exhibit No. 25, in respect to defendant's Juneau theatre, plaintiff also kept two amplifiers in Juneau for which defendant did not pay; I now produce the original records showing the equipment and mechanisms that plaintiff furnished to defendant at his two theatres as free replacements and for which no charges were made against him and for which he receipted.

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Whereupon a list of free replacements was received in evidence marked Plaintiff's Exhibit No. 27.

[208]

#### Cross Examination

Thereupon Witness Pearsall further testified: I have been in Los Angeles since November 15, 1928; George C. Pratt is now in charge but Nathan Levinson was in charge of our office there when I came with plaintiff in 1928; he remained there until some time in 1930 but is not there now; those bills showing the different parts plaintiff billed defendant for his two theatres came from plaintiff's accounting office but a copy was sent to our office in order to complete our records; it is quite possible some of those bills are not only for merchandise but also for repairs; the bills for service charges included service charges only; plaintiff's Los Angeles office on April 8, 1930, received a payment of \$538.00 from defendant that was applied on the weekly service charge against defendant's Juneau theatre

(Testimony of R. H. Pearsall.)

from February 8, 1930, through March 29, 1930, and on defendant's Ketchikan theatre for the same period, and also paid an invoice of March 20, 1930, for \$31.00 on the Juneau theatre, and an invoice of like amount of same date on the Ketchikan theatre; I really can't say when plaintiff first commenced to bill defendant for weekly service charges; I could not possibly state that the bill dated September 11, 1929, was not the first bill sent defendant for service charges; defendant paid through our office some \$3,150.00 on these service charges, the first payment being made in January, 1930, when he made a payment of \$1,979.60; I don't know whether it was paid directly to the Los Angeles Office or not because, if it was received at plaintiff's Seattle Office, the latter sent it to the Los Angeles Office for deposit; I know nothing about these service charges except the amount of them; the Los Angeles Office received a payment on January 3, 1930, of \$1,979.60, and of \$301.10 on February 12, 1930, of which \$238.00 was applied on service charges, and on April 8, 1930, the \$538.00 payment spoken of before, and on November 10, 1930, \$500.00, of which \$476.00 was applied against weekly service [209] charges, totaling some \$3,100.00 and odd dollars.

#### Redirect Examination

Whereupon Witness Pearsall further testified: Of the \$1,979.60 payment on January 3, 1930, \$1,963.50 was applied against weekly service charges,

(Testimony of R. H. Pearsall.)

the balance to payment of parts; of the \$538.00 payment on April 8, 1930, \$238.00 was applied on eight weeks' service charges to the Juneau theatre and the same amount to eight weeks' service charges to the Ketchikan theatre.

#### Recross Examination

Thereupon Witness Pearsall further testified: Plaintiff's Los Angeles records show the date that this money was received at that office and what the transactions were. [210]

The portions of  
PLAINTIFF'S EXHIBITS 24-A, 24-B, 25 and 26  
material and pertaining to the additional or spare  
parts equipment are as follows:

Plaintiff's Exhibit 24-a: Original ledger sheets, showing additional and spare parts charged against defendant account his JUNEAU THEATRE, totaling \$148.36, with credits of \$119.27.

Plaintiff's Exhibit 24-B: Original ledger sheets, showing additional and spare parts charged against defendant account his KETCHIKAN THEATRE, totaling \$207.64, with credits of \$145.72.

Plaintiff's Exhibit 25: Shows defendant's requisitions and receipts for the following additional and spare parts equipment furnished to him at his JUNEAU THEATRE, namely:

(Testimony of R. H. Pearsall.)

- 2 239-A Tubes. Y. T. 501150.
- 1 Det. 1-A ESO 318880 Film Tension Pad & Light Gate Assembly, Complete.
- 1 Bronzoid Plaque.
- 1 239-A Tube (Low emission, -used 20 hrs.) Y. T. 501133.
- 1 2-A Photoelectric Cell (Low, new not used) Y. T. 501148.
- 1 239-A Tube. Y. E. 500245.
- 6 ERPI 52 Battery Log Cards.
- 2 T-7 12 v. Candelabra Base, Horn Pilot Lamps.
- 2 KS-6243 Exciting Lamps (Del'd by Engr.) 10-24-29.
- 3 239-A Tubes Y. T. 500233 (Del'd by Engr.) New—elements bent.
- 1 239-A Tube Y. T. 500238 ( “ “ “ ) Low, 44 hrs.
- 2 239-A Tubes, Y. T. 500234. Low emission, used 88 hours.
- 1 Gal. KS-2245 Oil.
- 1 MIF 16" Connecting Cord for 4-A Reproducer Arm.
- 2 KS-6243 Lamps (Del. by Ser. Engr.)
- 1 Reg. Var. Snapswitch for 708-A Cabinet.
- 1 P-211823 Coupling Glange (Del. by Ser. Engr.)
- 2# Mobile Grease.

(Testimony of R. H. Pearsall.)

- 10' PEC Green Flex Lead Wire.
  - 20 6 Amp. #1106 Cartridge Fuses.
  - 4 P-221124 Upper Film Guide Rollers.
  - 1 10 meg. Grid Leak.
  - 2 .5 Meg. Grid Leaks.
  - 1 TA-7049 Fabric Coupling Assembly.
  - 10 EMT-1 Midget Arkless Fuses 1 Amp.
  - 2 Lead Battery Straps  $12\frac{5}{8}'' \times 3\frac{3}{4}'' \times 1\frac{1}{8}''$ .
  - 8 "A" Battery Nuts & Bolts.
  - 2  $\frac{1}{2}''$  Crouse Hinds Brass Ground Rushings—  
Not supplied at installation.
  - 6 KS-6243 Lamps.
  - 1 Det. 4 ES)-3/8335 Hard Green Felt  
Washers.
  - 2 Pcs. 4"x6" of  $\frac{1}{4}''$  # Crepe Rubber.
  - 2 MID Cords.
  - 2 Det. 4 ESO 318335 Felt Packing Washers.
- [211]
- 10 4302 2 amp. Plug Fuses.
  - 1 TA-7049 Coupling.
  - 6 KS-6243 Exciting lamps.
  - 2 239-A Tubes.
  - 1 2-A Photo Electric Cell.
  - 6 KS-6243 Exciting lamps.

Plaintiff's Exhibit 26: Shows defendant's requisitions and receipts for the following additional and spare parts equipment furnished to him at his KETCHIKAN THEATRE, namely:

(Testimony of R. H. Pearsall.)

- 1 Det. 1-A ESO 318880 Film Tension Pad & Light Gate Assembly, Complete.
- 1 11-A Connecting Block. Y. T. 500227.
- 1 239-A Tube (Del'd 10-24-29) Y. T. 500236.
- 1 205-D Tube. Y. T. 500237.
- 6 ERPI 52 Battery Log Cards.
- 1 KS-6243 Exciting Lamp (Del'd 10-24-29).
- 1 P-211826 Rubber Connector ( " " " )
- 1 239-A Tube. Y. T. 501018.
- 2 KS-6243 Exciting Lamps.
- 1 1-A Aperture Y. T. 500232 Mask handle broken, used 375 hours.
- 1 555-W Receiver. Y. T. 500231. Speech coil shorted, used 750 hrs.
- 6 KS-6243 Lamps (Del'd 2-28-30).
- 3 Det. 8 KSO 318880 Film Guide Rollers. Y. T. 527737 (Del'd 2-28-30).
- 1 Det. 1-A Pressure Pad Assembly. Y. T. 527739.
- 1 239-A Tube. Y. T. 527739 (Del'd 2-28-30).
- 2# Mobile Grease.
- 2 P-211823 Coupling Flanges (1) del. by Ser. Engr.
- 2 KS-6243 Exciting Lamps Del. by Serv. Engr.
- 1 2-A Photoelectric Cell. Y. T. 527934.
- 2 D-91179 Conversion Parts.
- 1 KS-6243 Lamp (O-Hours) (Y. T. 527510).
- 6 KS-6243 Lamps.

(Testimony of R. H. Pearsall.)

- 2 D-91179 Conversion Parts.
- 2 KS-6684 Rheostats.
- 1 KS-6243 Lamp (O Hours) Y. T. 527510.
- 2 Crouse Hinds Ground Bushings #251.
- 6 KS-6243 Lamps.
- 2# Mobilgrease.
- 1 TA-7049 Couplings.
- 2 D-91179 Conversion Parts.
- 2 Det. 4 ESO-318335 Felt Washer for 712-A Drive.
- 6 KS-6243 Lamps.
- 10 EMT-1 Midget Arkless Fuses.
- 10 4303 3 Amp. Plug Fuses.
- 2 Det. 8 ESO-318335 Special Gears for 712-A Drive.
- 3 239-A Vacuum Tubes.
- 10 10 Amp. Plug Fuses.
- 10 15 Amp. Plug Fuses. [212]

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PLAINTIFF'S EXHIBIT #27.

shows the following list of free replacements:

Order dated 2/25/30 shipped to Coliseum Theatre, Juneau, receipted by Chas. Tuckett, viz:

- 1 MID 16" Cord 29-A to connecting block
- 1 #1612 H&H Switch for 708A control box (on & off)

Suggest free replacement be made on cord as it was used to make emergency replacement of defective PEC lead.



(Testimony of R. H. Pearsall.)

Order dated 8/22/29 shipped to Coliseum Theatre, Ketchikan, receipted by L. C. Lemieux, viz:

1	KS-6243	Exciting Lamp	No chg.
2	239-A	Tubes	No chg.
2	205-D	Tubes	No chg.

Above to replace defective tubes.

2	Gals. KS-2245	Oil	Full Price
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Order dated 8/24/29 shipped to Coliseum Theatre, Juneau, receipted by W. D. Gross, Manager, viz:

2	239-A	Tubes	No chg.
3	239-A	Tubes	Full Price
1	2-A	P.E. Cell	No chg.

Above required to complete spare parts.

1	Pound can	Mobiloil "CC"	Full Price
1½	Gals. KS-2245	Oil	Full Price
½	(½ Gal. rec'd 8/24/29)		
1	Grid leak	.5 meg.	No chg.

Order dated 6/20/29 shipped to Coliseum Theatre, Juneau:

6	29-A	Connecting block
		Per inst. P.M.W.

Order dated 2/22/30 shipped to Coliseum Theatre, Juneau, receipted by Chas. Tuckett, viz:

4	239-A	Vacuum Tubes (all under 100 hrs)
		Classification Charge
		20-095

Order dated 7/16/30 shipped to Coliseum Theatre, Juneau, receipted by J. S. Briggs, viz:

(Testimony of R. H. Pearsall.)

2 D-89833 Conversion Parts for 711-A	
Drives	Classification Charge
	30181

Replaced material to be destroyed in  
the field. [213]

Order dated 7/16/30 shipped to Coliseum Theatre,  
Ketchikan, receipted by J. S. Briggs, viz:

2 D-89833 Conversion Parts for 711-A	
Drives	Classification Charge
	30181

Replaced material to be destroyed	
in the field	free repl.

Order dated 11/19/29 shipped to Coliseum Theatre,  
Juneau, receipted by Chas. Tuckett, viz:

1 239-A Tube (Low emission, used 50 hours)	free
1 239-A Tube (Low emission, used 80 hours)	free

Shipping order dated 6/17/29 shipped to Coli-  
seum Theatre, Ketchikan, receipted by L. C. Le-  
mieux, viz:

1 205-D Vacuum Tube
2 3/8" Lead Plated Sherman Lugs

Shipping order dated 4/9/30 shipped to Coliseum  
Theatre, Juneau, viz:

4 P-221124 Upper Film Guide Rollers
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(Testimony of R. H. Pearsall.)

Shipping order dated 6/7/30 shipped to Coliseum Theatre Juneau, viz:

- 10 EMT-1 Midget Arkless Fuses 1 Amp.
  - 2 Lead Battery Straps 12-5/8" x 3/4" x 1/8"
  - 8 "A" Battery Nuts and Bolts
  - 2 1/2" Crouse Hinds Brass Ground Bushings
- Not supplied at installation.

Shipping order dated 6/17/30 shipped to Coliseum Theatre, Juneau, viz:

- 6 KS-6243 Lamps
- 1 Det. 4 ESO-318335 Hard Green Felt Washers

Shipping order dated 9/6/30, Back Order, shipped to Coliseum Theatre, Juneau, viz:

- 1 P-97196 Screws (700-Apparatus Unit)
- 1 P-97084 Switch Arm (700-A Apparatus Unit)

Shipping order dated 9/6/30 shipped to Coliseum Theatre, Juneau, viz:

- 2 pcs. 4" x 6" of 1/4" Crepe Rubber
- 2 M-1-D Cords, 16"
- 2 Det. 4, ESO 318335 Felt Packing Washers

- 10 4302—2 Amp. Plug Fuses
- 1 TA-7049 Coupling

Shipping order dated 5/8/30 shipped to Coliseum Theatre, Ketchikan, viz: [214]

- 2 Crouse Hinds Ground Bushings #251
- 2# Mobilgrease
- 1 TA-7049 Couplings

Shipping order dated 5/8/30, Back Order, shipped to Coliseum Theatre, Ketchikan, viz:

- 1 KS-6243 Lamp (O-Hours (Y. T. 527510)
- 6 KS-6243 Lamps

Shipping order dated 6/2/30, Back Order, shipped to Coliseum Theatre, Ketchikan, viz:

- 2 Det. 8 ESO 318335 Special Gears  
for 712-A Drive

Shipping order dated 6/2/30, shipped to Coliseum Theatre, Ketchikan, viz:

- 2 Det. 4 ESO-318335 Felt Washer for  
712-A Drive
- 6 KS-6243 Lamps
- 10 EMT-1 Midget Arkless Fuses
- 10 4303 3 Amp. Plug Fuses

Shipping order dated 5/8/30, Back Order, shipped to Coliseum Theatre, Ketchikan, viz:

- 2 D-91179 Conversion Parts

Order dated 10/28/29, shipped to Coliseum Theatre, Ketchikan, viz:

- 2 4-B Apertures free  
Replacing 2 Det. 1-A ESO-321066 slit assemblies in use 6 months and to be returned for re-adjustment. [215]

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Thereupon certified copies of the United States Marshal's returns of service of the writ of replevin

(Testimony of R. H. Pearsall.)

for the equipments in controversy were received in evidence, marked

PLAINTIFF'S EXHIBIT No. 28,

which reads as follows:

[Title of Court and Cause.]

RETURN ON AFFIDAVIT FOR DELIVERY  
OF PERSONAL PROPERTY

United States of America,  
Territory of Alaska,  
Division Number One—ss.

I, ALBERT WHITE, United States Marshal for the First Judicial Division of the Territory of Alaska, hereby certify that on April 20, 1931, I received the within affidavit for delivery of personal property, together with plaintiff's written endorsement thereon, requiring me to take possession of the hereinafter described personal property from the defendant W. D. Gross and to deliver it to the plaintiff Electrical Research Products, Inc., a corporation, together with the plaintiff's written undertaking in favor of the defendant, in the sum of \$13,200.00, double the value of the hereinafter described personal property, and that thereafter and on said day I duly approved said undertaking, and that thereafter and on the 28th day of April, 1931, I duly served upon the defendant W. D. Gross, in Ketchikan, Alaska, the said affidavit, together with said written endorsement thereon and

(Testimony of R. H. Pearsall.)

said undertaking by then and there delivering to F. L. Stannard, personally and in person, who was then the agent of said W. D. Gross and from whose possession said hereinafter described personal property was thereafter taken, the said W. D. Gross not being then in Ketchikan and I being unable to find him therein, copies of said affidavit, written endorsement thereon, and said undertaking, all of which were certified by R. E. Robertson, plaintiff's attorney, and that I thereupon took into my possession from said Stannard, the aforesaid agent of said defendant W. D. Gross, the following described personal property, to-wit:

That certain equipment more particularly designated as "Type 2-S equipment designed for use with two simplex projectors for film and disc reproduction" for the electrical reproduction of sound in synchronization with, or as incidental to, the exhibition of motion pictures, or any performance given in conjunction therewith, all of which was then situated in the Coliseum Theatre in Ketchikan, Alaska.

That thereafter I retained said personal property in my possession for more than three days, and that the defendant did not within said three days after the service of the copies of said affidavit and undertaking upon him, or at all, give notice to me that he excepted to the sufficiency of the sureties on said undertakings, nor did said defendant, with-

(Testimony of R. H. Pearsall.)

in said three days, or at all, require the return of said personal property to him, and that thereafter and on the 4th day of May, 1931, I duly delivered the aforesaid personal property to the plaintiff.

Dated at Ketchikan, Alaska, this 4th day of May, 1931.

ALBERT WHITE,  
United States Marshal  
(Signed) By WM. H. CASWELL  
Office Deputy

Costs paid by plaintiff:

Service of Writ .....	\$ 3.00	
Mileage .....	.10	
Hauling .....	12.00	
Storage .....	2.00	[216]

[Title of Court and Cause.]

RETURN ON AFFIDAVIT FOR DELIVERY  
OF PERSONAL PROPERTY

United States of America,  
Territory of Alaska,  
Division Number One—ss.

I, ALBERT WHITE, United States Marshal for the First Judicial Division of the Territory of Alaska, hereby certify that on April 20, 1931, I received the within affidavit for delivery of personal property, together with plaintiff's written endorsement thereon, requiring me to take possession of the hereinafter described personal property from

(Testimony of R. H. Pearsall.)

the defendant W. D. Gross and to deliver it to the plaintiff Electrical Research Products, Inc., a corporation, together with the plaintiff's written undertaking in favor of the defendant, in the sum of \$13,200.00, double the value of the hereinafter described personal property, and that thereafter and on said day I duly approved said undertaking, and that thereafter and on the 20th day of April, 1931, I duly served upon the defendant W. D. Gross, in Juneau, Alaska, the said affidavit, together with said written endorsement thereon, and said undertaking by then and there delivering to said W. D. Gross, personally and in person, copies of said affidavit, written endorsement thereon, and said undertaking, all of which were certified by R. E. Robertson, plaintiff's attorney, and that I thereupon took into my possession from said W. D. Gross the following described personal property, to-wit:

That certain equipment more particularly designated as "Type 2-S equipment designed for use with two simplex projectors for film and disc reproduction" for the electrical reproduction of sound in synchronization with, or as incidental to, the exhibition of motion pictures, or any performance given in conjunction therewith, all of which was then situated in the Coliseum Theater in Juneau, Alaska.

That thereafter I retained said personal property in my possession for more than three days, and that



(Testimony of R. H. Pearsall.)

the defendant did not within said three days after the service of the copies of said affidavit and undertaking upon him, or at all, give notice to me that he excepted to the sufficiency of the sureties on said undertaking, nor did said defendant, within said three days, or at all, require the return of said personal property to him, and that thereafter and on the 9th day of May, 1931, I duly delivered the aforesaid personal property to the plaintiff.

Dated at Juneau, Alaska, this 22nd day of May, 1931.

ALBERT WHITE,  
United States Marshal,  
(Signed) By DONALD E. MARTIN  
Office Deputy.

Costs paid by plaintiff:

Service of Writ .....	\$ 3.00	
Mileage .....	.10	
Hauling .....	7.00	
Storage .....	—	
Watchman .....	5.00	[217]

Thereupon, in response to plaintiff's motion, defendant withdrew his third and sixth affirmative defenses; but plaintiff's further motion also then made, namely: that defendant be required before going to proof to elect as to whether or not he sought to recover damages for alleged loss of good will or damages for alleged loss of profits under his first and third counterclaims, was overruled, to which ruling plaintiff then excepted. [218]

## DEFENDANT'S CASE IN CHIEF

## I. GOLDSTEIN

I. Goldstein, defendant's witness, being first duly sworn, testified:

## Direct Examination

I am Mayor at this time and also in business; I have lived in Juneau for forty-five years; I am familiar with the Coliseum Theatre, having attended shows there off and on ever since it was running, prior to April 20, 1931.

Thereupon witness Goldstein was asked by defendant:

“Did you notice any difference in the sound and the pictures shown there after—between the period immediately following April 20, 1931, and the year preceding that date?”

Thereupon plaintiff objected to the question and to the entire line of testimony upon the ground that it was incompetent, irrelevant, and immaterial, no foundation laid, and no proper qualification of the witness, which objection was overruled, to which ruling plaintiff then excepted.

Thereupon the following further proceedings were had:

A. I did.

Q. What was the difference between the sound and pictures prior to April 20, 1931, and after?

A. I couldn't exactly state the exact dates but when there was a change made in the ma-

(Testimony of I. Goldstein.)

chines down there there was no comparison in the sound.

Q. Was it better or worse afterwards?

A. It was much worse.

#### Cross Examination

Thereupon Witness Goldstein further testified: I couldn't tell either the last date before April 20, 1931, or the first date after April 21, 1931, that I attended the Coliseum Theatre. [219]

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#### W: D. GROSS

Defendant Gross, on his own behalf, being first duly sworn, testified:

#### Direct Examination.

I live in Juneau, I am now and have been engaged in the moving picture business for thirty-three years and in Juneau since 1910 and in Ketchikan since 1908 where I built the present Coliseum theatre in 1924: I bought the property and rebuilt the Juneau Coliseum theatre in about 1912; I signed plaintiff's exhibit 1 around February, 1929, at which time it had not been signed by plaintiff, and sent it to plaintiff's main offices; I received my copy, signed by plaintiff, some time in April, 1929, in Juneau by mail; meanwhile I had seen plaintiff's representative Gage in Seattle and he told me "that the contract was accepted, with the provision to leave open the clause that had service charges."

(Testimony of W. D. Gross.)

Thereupon defendant's counsel propounded the question "Did he say 'leave open' or 'leave out'?" to which defendant then answered, "'leave out'".

Thereupon defendant further testified: Plaintiff's Seattle agent representative, Gage, told me I would have to look for my own service man; I waited in Seattle for Taylor, plaintiff's installation man and engineer, and left Seattle on the same boat with him; I tried to get a service man but in them days you couldn't get any; I talked to Taylor, told him that we have good reliable men who have been growing up in the business, if he would instruct my men in starting when the equipment goes in, work from the bottom up and show them all the details in case it breaks down, they would be able to take care of it themselves; Taylor and I arrived in Juneau the latter part of April and found my contracts here waiting for me; I introduced Taylor to Charles Tuckett, then Manager of my Juneau theatre, and to Louis Lemieux, first operator in my Juneau theatre but afterwards manager for my Ketchikan theatre; Tuckett and Lemieux helped Taylor and they [220] worked together for a couple weeks; Taylor had a book explaining all the details in case anything goes wrong with the equipment so that they would be able to take care of it; these men got some books from Richardson, New York, but I don't know what they did about studying them; I increased the pay of these men from \$150.00 to \$250.00; the equipment in Juneau was installed May 20, 1929, and in Ketchikan about the middle of

(Testimony of W. D. Gross.)

June, 1929; I met plaintiff's Witness Wilcox in Juneau in July, 1929, and Taylor brought him into my office and represented him as an official of the company and supervisor over installation and service and we had a conversation in the operating booth at which Louis Lemieux was present, to whom I introduced Wilcox; Wilcox asked Louis Lemieux "How is the sound?" and also asked Taylor if everything was O. K., and Taylor says the machines are running for the last two weeks now and thinks he will be able to go back to Seattle, and he asked Wilcox to go to Seattle, and Wilcox permitted him to go back to Seattle, "as Mr. Gross has no service with us in Alaska." I don't think I could give the conversation any more fully; Taylor wanted to go back to Seattle because he wanted to be more athletic and Wilcox told him he could go on the first boat "as Mr. Gross has no service with us". Taylor and Wilcox both left right after that, and I run the theatre right along then; that is my signature on plaintiff's exhibit No. 7-A; I don't recollect seeing Albright at that time; he came into the office and handed me this to sign some time the last part of August; I don't remember Knowlton or any of them; I was in Juneau very little of the time; plaintiff's service engineers might have been here without my knowing it; I left Juneau some time in September, 1929, and hadn't heard anything about service charges or received any bill for service

(Testimony of W. D. Gross.)

charges before I left; the first time I heard anything about a claim for service charges was Tuckett wired me in the East some time in October, 1929; I then left for Chicago because I figured [221] to see Wilcox on account of his statement to me and Lemieux that I don't have service, but I didn't see him; I talked to some man, I don't know who he was, about service, and learned from him to go to Seattle and to take up the matter with Gage; I went to New York but I didn't go see plaintiff; I returned by way of Los Angeles to Seattle and arrived in Seattle some time in December, 1929; I never saw plaintiff's exhibits 2 and 4 until I reached Seattle; I saw it in Gage's office; I had not received the mail Tuckett had forwarded me; I had been traveling about too much; I called to see Gage right away in regard to these service charges.

Whereupon the following proceedings took place:

“Q. When you came into Mr. Gage's office, and after you met him and talked to him, knew him,—what, if anything, did you say with reference to service?”

“Mr. ROBERTSON: If the court please, the plaintiff now objects as incompetent, irrelevant and immaterial, to the reception of any evidence on behalf of the defendant that is calculated or intended to prove that the defendant signed the plaintiff's exhibits ‘2’ and ‘4’ under duress, upon the ground, if the court please—  
\* \* \* that neither in the first or fourth

(Testimony of W. D. Gross.)

affirmative defenses or in the second and fourth counter-claims are sufficient facts stated to constitute legal duress.”

“The COURT: The motion, as a whole, will be denied.

“Mr. ROBERTSON: Take an exception.

“The COURT: Allowed.

“Mr. ROBERTSON: I wonder if it may be understood that I object to all evidence introduced in the case, produced by the defendant either through Mr. Gross or any other witness or documents produced for the purpose of supporting the charge of duress made in the first and fourth affirmative defenses and in the second and fourth counter-claims, and have an exception to it without having to make the objection each time?

“The COURT: Yes. Let the record so show.”

Thereupon Witness Gross further testified: I asked him “What is the idea of charging me for service when I never signed up for service.” He claimed he can’t help himself, plaintiff is writing him right along and he has to write me at same time; we talked quite a little; I can’t remember exactly all that he said; he has to get the money or they are going to pull out all the [222] machines; Gage said he received a letter from plaintiff they wanted me to sign it to make it a part of the con-

(Testimony of W. D. Gross.)

tract and he gave me those letters, plaintiff's exhibits Nos. 2 and 4, to sign; if I don't sign he threatened to take the machines out, same thing as if a person has a telephone and doesn't pay for the telephone, the telephone system would disconnect him; he spoke about paying back service charges; I told him I didn't owe service charge, didn't see why I should pay a service charge from the day I got the machines, and he said that is what the company wants, and he would take the machines out if I didn't pay; if I don't pay the money he would notify his attorney to pull out both machines at Juneau and Ketchikan and if I didn't sign the contracts; I then signed the contracts and paid him the money.

Whereupon the following proceedings were had:

Q. At that time, Mr. Gross what was the condition of your business, in Juneau and Ketchikan? How would your business in Juneau and Ketchikan be affected by taking out those machines?

A. I would say they would destroy the business if they took out those machines.

Q. In both places?

A. Yes.

Q. Did you know what your rights were under the contract at that time—whether he had a right to take them out or not?

A. I presume I did—I understood that they could do that.



(Testimony of W. D. Gross.)

Q. You understood he could take them out?

A. Yes.

Q. Did Gage tell you anything about that?

A. Yes.

Q. What was it?

A. He said if I didn't pay the money and sign the contract [223] he would tear the machines out.

Q. Did he tell you anything about his power to do it?

A. He said he had power to do it.

Q. Did you know whether he had power to do it?

A. Yes I did, he did have power to do it.

Q. You believed he had power?

A. I believed he did.

Q. Did you know anything about the law?

A. Not at that time, I don't know much about the law.

Q. Did you believe he had the power to do it?

A. Yes sir.

Whereupon defendant Gross further testified: I owed plaintiff for five months that we hadn't paid yet but I didn't owe him anything that was due at that time; I had done everything the contract called for; there was still five months unpaid but the payments had been kept up right along; I didn't owe them anything on the Juneau contract of March

(Testimony of W. D. Gross.)

28, 1929, nor the Ketchikan contract of March 28, 1929, but had paid everything due under them to that time; I performed everything required of me under those contracts; when I signed the application for those contracts I paid \$1.130.00 on deposit; these payments that fell due were made in twelve payable notes that are described in the contract and at that time I had paid seven of them and interest also; I believed Gage had the power and would take the machines out.

Thereupon the following proceedings took place:

“Q. Was there anything that lead you to sign those contracts except the threats of Mr. Gage?

A. Yes sir.

Q. ‘Yes sir’ or ‘No sir’?

A. No sir.

Q. What do you mean—‘yes’ or ‘no’?

A. I didn’t catch that right. [224]

Q. You ought to get the question before you answer it. Was there anything that lead you to sign those contracts except the threats of Mr. Gage;—in other words, would you have signed the contracts except for the threats of Mr. Gage?

Mr. ROBERTSON: That is leading if the Court please; object.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

A. No.’

(Testimony of W. D. Gross.)

Thereupon Witness Gross further testified: I never saw Anderson, the man whose deposition has been read in this case; I can't recollect whether I ever wrote him or not; Gage never told me who Anderson was; after the contracts had been signed by me and the money paid to Gage, the latter told me he was going to try to persuade the company to put a man in Juneau and one in Ketchikan to take care of my service but they never did; I personally paid \$500.00 for service charges in April, 1930, to Gage; I was in Seattle at that time and Gage called me up on the 'phone and when I got there they told me I owed them \$500.00; he was going to have two men stationed one in Juneau and one in Ketchikan; they told me this way—if I don't pay the service charges right now when I sign them letters—you know what is going to happen to me; I said "What is going to happen to me?" they said, "When a chicken don't lay eggs you know what happens to her, they cut her head off and that is what we are going to do to you if you don't pay up", and I had to pay the money then; I couldn't get talking machines at that time; there was only one other outfit that sold talking machines at that time and you couldn't be sure that they would talk or not, and no other place you could get a good machine; no other talking machines were available in December, 1929, when I signed plaintiff's exhibits 2 and 4, or that I could get to take the place of these that had been taken out; I paid Gage that \$500.00 by check which

(Testimony of W. D. Gross.)

I now produce; this is the check and it includes service and some merchandise.

Whereupon the following proceedings were had:

[225]

“Mr. HELLENTHAL: I offer it in evidence.

Mr. ROBERTSON: I have a general objection as to all this line of testimony, so I wouldn't like to consent to it.

Mr. HELLENTHAL: Offer it in evidence as Exhibit 'E'.

The COURT: It may be received.”

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Whereupon check was received in evidence and marked defendant's exhibit E, and reads as follows:

“EXHIBIT E.

Juneau, Alaska, April 2, 1930.

PAY TO THE ORDER OF

Electrical Research Products Inc.....\$538.00  
 Five hundred thirty eight and 00/100 DOLLARS  
 TO: THE B. M. BEHREND'S BANK

Juneau, Alaska

Coliseum Theatre  
 by W. D. Gross, Manager.  
 CT

(Testimony of W. D. Gross.)

(endorsed on back as follows:)

Pay To the Order of Security-First National Bank  
of Los Angeles

Highland & Hollywood Branch

April 10, 1930

Electrical Research Products, Inc.

Acoustic Department

Account No. 1''

---

Thereupon Witness Gross further testified: The check of \$538.00 is for service and also merchandise; I have no idea whether \$62.00 of it is for merchandise or not; I don't know what part is for merchandise and what part for service; I never paid any service at all after that, I never directed the payment of any service by anybody else among my employees; so far as I know no service was paid after that.

Whereupon two checks, offered in evidence by defendant, were received, and marked, respectively, defendant's exhibits F-1 and F-2, and read as follows: [226]

(Testimony of W. D. Gross.)

## "EXHIBIT F-1

Juneau Alaska Service

(Juneau)

Juneau, Alaska, Dec. 30, 1929.

Pay to the Order of

Electrical Research Products Inc. \$1019.00

One Thousand Nineteen and 00/100.....Dollars

To THE B. M. BEHREND'S BANK

Juneau, Alaska

COLISEUM THEATRE, JUNEAU

(Signed) W. D. GROSS, Manager."

## "EXHIBIT F-2

Ketchikan Alaska Service

(Ketchikan)

Juneau, Alaska, Dec. 30, 1929.

Pay to the Order of

Electrical Research Products Inc. \$960.00

Nine Hundred Sixty and 00/100.....Dollars

To THE B. M. BEHREND'S BANK

Juneau, Alaska

COLISEUM THEATRE, JUNEAU

(Signed) W. D. GROSS, Manager."

Thereupon Defendant Gross further testified: Those checks, defendant's exhibits F-1 and F-2 were paid by me at the time I signed the papers; Gage

(Testimony of W. D. Gross.)

filled them out and I signed them in his office; they are for service and also for merchandise; this letter, defendant's exhibit F-3 for identification was written by [227] me to Gage; I dictated it, it was written by Charles Tuckett, when I arrived in Juneau from Seattle after I paid them the \$2,000.00; I never received a reply to it.

Whereupon the following proceedings took place:

“Mr. HELLENTHAL: I offer this letter in evidence.

Mr. ROBERTSON: We have the same objection, the same objection to all this line of testimony; to this letter.

The COURT: It may be received.”

Thereupon defendant's letter to Gage, dated February 10, 1930, was received in evidence, marked

DEFENDANT'S EXHIBIT F-3,

and reads as follows:

“Feb. 10, 1930.

Mr. Gage,  
Electrical Research Products Inc.,  
Seattle, Wash.

Dear Friend Gage:

I arrived in Juneau today and my manager is complaining about the service that you have been giving us up here on your Western Electric system.

I paid you while in Seattle, something like \$2000.00 for back service. I can say that I am awful sorry now that I have done this and also that I

(Testimony of W. D. Gross.)

signed the contract for service as the men you have sent up here have done more harm than they have done good.

After keeping the machines for several months with my own men taking care of them. They gave us no trouble and perfect service. But after I decided on service and service was given they have been on the bum and in fact are still on the bum.

It seems to me that I have men operating in the booth who seem to know more about your equipment than you so called service men or rather electrical engineers. And still we have no right to look over our equipment. You send a man up here just out of school and who don't know what it is all about.

For the last two months we have had one man up here and he gave about 30 minutes service to the machines and put it on the bum because since that time everything has happened.

To days we have plenty of trouble on our Movietone and also your tubes do not hold up to the standard. They must be old tubes or damaged ones, I don't know which.

Everything from the first that has had to be fixed on this equipment has been done by my men. And most of the time without any help from your office. There is not one thing that has happened to these machines that we have not had to fix ourselves as your service men were too late or they did not come at all in fact we can name one thing that your



(Testimony of W. D. Gross.)

service man, one of them could not fix and my man fixed it. [228]

Also we have been promised and they have been recommended, new lenses for the Movietone. But to date we have failed to receive them or in fact hear anything about them. And more than two months ago we ordered felt pads and they have just arrived.

I want to discontinue my service as since I paid you \$2000.00 your service has been very unsatisfactory and for a matter of fact before this time. In fact my own men are better able to do this service that what your engineers can. As my men have to fix things when they go wrong right then as the show must go on no matter what happens.

When I saw you on the wharf you had a man coming up here. But it seems that he just looked at a few things and left at once for Lathrops towns. He spent about enough time to write out a report and that is all. Thirty minutes would be a long time for him here.

I think I am entitled to a adjustment on this \$2000.00 and also on the last remittance that was made from Juneau as it is just a waste of time for them to come up here to spent 20 or 30 minutes and then go and then my men have to fix things.

I would like a answer to this letter by return mail as I am not at all satisfied with your service.

Very truly yours,

WDG/c

W. D. GROSS."

(Testimony of W. D. Gross.)

Thereupon Defendant Gross further testified: This letter marked defendant's exhibit F-4 for identification, was dictated by me in Juneau and written by Charlie Tuckett, but signed by me and written to Gage and I never received any reply to it.

Whereupon the following proceedings took place:

“Mr. HELLENTHAL: I offer this in evidence.

Mr. ROBERTSON: I think I will also interpose an objection to this, if the Court please, as a self-serving declaration.

Mr. HELLENTHAL: It is a part of the correspondence, Your Honor.

The COURT: It may be admitted.

Mr. ROBERTSON: Exception, if the Court please.”

Thereupon defendant's letter to Gage, dated February 17, 1930 was received in evidence, marked

DEFENDANT'S EXHIBIT F-4,  
and reads as follows:

“Juneau, Alaska,  
Feb. 17, 1930.

Mr. Gage,

Electrical Research Products, Inc.,  
Seattle, Wash. [229]

Dear Mr. Gage:

I received a wire from your office to the effect that your engineer would arrive Juneau, on the twelfth of the month to repair our equipment that we were

(Testimony of W. D. Gross.)

having trouble with. To date your engineer has failed to arrive and according to the boat schedules he will not be able to arrive until about the twenty-fifth. This is twelve days after you notified me that he would be here.

This delay in your man arriving has made it so that I had to have my own man repair your equipment.

My idea Mr. Gage, is that there is no way that we can have service in Alaska that would be satisfactory unless you have a man in each town that you have a equipment. As it is now the boats are so far between in the winter time, that it is over fifteen days before we could even get service here. And it always happens that when we need service there is no boat or your man is some wheres else. This winter everything that has happened we have had to fix. In fact not one of your men have fixed a thing that has gone wrong. All they have done is to look over the equipment and let it go at that. I would rather take chances and if my men could not fix things, I would wire you for a man and would pay his fare expense and salary to Juneau and back.

The \$2,000 I paid you while I was in Seattle, I am now sorry that I did this. RCA has no service man. All the exhibitors that have one of these equipments have to do is to pay off for the machine.

(Testimony of W. D. Gross.)

I do not see why I should have to have a service man and get no service as I can assure you that all the real servicing that has been done has been done by my own men.

You had better notify your New York Office as to my intention on this service charge.

Also if you think that you can put a service man in Juneau, and have him service Fairbanks. I can assure you that this can not be done, as the boats and trains in this country do not run as the trains do outside. It will take sometimes a couple of months to make this trip and sometimes longer than this as you can never tell when a boat is going on the rocks, which they do.

From now on I am going to ignore your service charges unless you have a man in Juneau and one in Ketchikan, and if you do not do this. Then I will call for one from Seattle when I need one and will pay his fare salary and expenses from Seattle.

I am enclosing a bill. And you may make a copy of same and send it to New York.

I have regretted signing that letter the minute after I signed it as your service here in my theatre has been most unsatisfactory, in fact I have received no service when I really needed it. No court will uphold this agreement when the service has been as it have in the past.

My manager notified you on Feb. 3, 1930 that one of the machines were in need of service. Here it is

(Testimony of W. D. Gross.)

the 18th and no man has arrived yet. This is not service I can assure you. [230]

I am awaiting a reply to this letter before I take this matter farther as I am very dissatisfied the way things are and have been going in regards to service.

Very truly yours,

WDG/c

(Signed) W. D. GROSS''

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Thereupon Defendant Gross further testified: This letter addressed to Pearsall, San Francisco, marked defendant's exhibit F-5 for identification, was dictated by me, I wrote it, postage was prepaid on it; I never received any reply to it.

Whereupon the following proceedings took place.

Mr. HELLENTHAL: I will now offer this letter in evidence.

Mr. ROBERTSON: We make the additional objection to that, if the Court please, that it is a self-serving declaration.

The COURT: It may be received.

Thereupon defendant's letter to Pearsall, dated March 28, 1930, was received in evidence, marked

DEFENDANT'S EXHIBIT F-5,

and reads as follows:

(Testimony of W. D. Gross.)

“Seattle Washington  
March 28, 1930.

Mr. R. H. Pearsall  
Electrical Research Products  
San Francisco, California.

Gentlemen:

Your wire of March 14th was relayed to Seattle, as you know I have been traveling for several weeks through small towns.

Will state that the service charge, as it now stands, is out for Alaska. Unless we have a man right in the town where the machines are, it is absolutely no use to make any attempt to pay service charges for Western Electric Equipment.

My man wired you at one time that their machine had broken down and to send a repair man. You answered, stating that a man would be sent on the first boat leaving Seattle, but he did not show up for several weeks, and we were without service during that time. We had to run one machine as the first one was out of “whack” and I cannot see where your service is of any use to us or where it does us any good.

My first agreement with the company was to pay for service charges as I needed them, and for any service needed, I was to pay a man a salary and for his ticket up and down.

A man stationed in Juneau could take care of Juneau and Ketchikan. That would be quite a chance as the boats do not run very often, about

(Testimony of W. D. Gross.)

once a week or every ten days. In case the machine in Ketchikan broke down, we would have to [231] wait a week or ten days for a man to come from Juneau, but that would be more help than the present line up for service.

You just received \$2000.00 for service for two men to come up and then go right out again on the next boat.

Hoping you can see I am trying to get away from the present service, and if this thing doesn't come to settlement, I will have to make a settlement on this service charge, which would be the best way to handle it.

You could write me at Seattle, c/o Atwood Hotel. I am going to take this matter up with Mr. Gage, your representative. I wrote him a letter, telling him all about the situation, and I don't know whether he referred the letter to you or not.

Yours very truly,

WDG:h

(Signed) W. D. GROSS"

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Thereupon Defendant Gross testified further: I received this letter, defendant's exhibit F-6, for identification, from plaintiff.

Whereupon Mr. N. A. Robinson's letter on behalf of plaintiff to defendant, dated June 11, 1930, was received in evidence, marked

**DEFENDANT'S EXHIBIT F-6,**

and reads as follows:

(Testimony of W. D. Gross.)

“(Letterhead)

ELECTRICAL RESEARCH PRODUCTS INC.

Subsidiary of

WESTERN ELECTRIC COMPANY

Incorporated

NEW YORK, N. Y.

Western Division Headquarters

7046 Hollywood Boulevard

Los Angeles, California.

June 11, 1930.

Mr. W. D. Gross,  
Ketchikan, Alaska.

Dear Mr. Gross:

We have for some time considered arrangements for servicing your theatres at Juneau and Ketchikan, that might better assure you of uninterrupted performances.

We realize that under the present arrangements a serious breakdown in the equipment might mean the loss of several consecutive shows before our engineer could arrive at the scene.

As a means of overcoming this hazard, we are contemplating the employment of a man in each of the towns in Alaska where our equipment is located, to render emergency service. We plan to secure men with the proper technical background, train them in the maintenance of the sound installation, and furnish them with tools, technical data and other equipment nec- [232] essary to insure



(Testimony of W. D. Gross.)

their ability to keep the installation operating properly.

In addition to this service, we intend to send a Technical Inspector to Alaska at intervals of approximately six months with the dual purpose of thoroughly overhauling the sound equipment and to instruct the local service men in the latest developments in sound reproduction. The proposed arrangements would in no way effect the weekly service charge that you are now paying. Any additional expense involved will be absorbed by this Company.

As we would like very much to see these arrangements in effect before the end of the summer, we shall appreciate your early acknowledgment of agreement to the proposals set forth in the foregoing. With best wishes for continued success, I am

Very truly yours,

(Signed) N. A. ROBINSON

Service and Technical Inspection  
Superintendent."

NAR:ID

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Thereupon defendant Gross further testified: Plaintiff never placed a man in Juneau and Ketchikan as indicated in that letter nor did anything indicated in that letter, nor took any steps toward it; I wrote this letter, defendant's exhibit F-7 for

(Testimony of W. D. Gross.)

identification, to plaintiff regarding service charges and the original letter was placed in the post office, postage prepaid; I never received a reply to it.

Whereupon the following proceedings took place:

“Mr. HELLENTHAL: I now offer that in evidence.

Mr. ROBERTSON: To that also I make the additional objection it is a self-serving declaration.

The COURT: It may be received.”

Thereupon defendant's letter to plaintiff, dated September 15, 1930, was received in evidence, marked

DEFENDANT'S EXHIBIT F-7,

and reads as follows:

(F-7)

“Juneau, Alaska,  
September 15, 1930.

Electrical Research Products Inc.

7064 Hollywood Blvd.

Los Angeles, Calif.

Gentlemen: [233]

I notice that the Service Charges have piled up again on our Western Electric equipment.

I will state that it is impossible to pay these Service Charges as we have numerous other expenses to pay and have to keep our theatres running but find it impossible to do so and still pay you Service Charges.

(Testimony of W. D. Gross.)

I feel that I have done more than any one else has done towards the Electrical Research Products Inc. I paid out \$21,000 for the machines and also about \$3,000 for service which I never received value.

I therefore feel that my help can take care of the equipment and if we need any service will wire to Seattle and pay the expenses from Seattle to either Juneau or Ketchikan what ever the case may be. This is the best I can do at present.

I would like to receive a letter from you in regards to your opinion to the Service Charge, as if I have to pay Service Charges for 10 years I would rather install RCA and by using their equipment I wouldn't have to pay any Service Charge.

Please let me know what your intentions are as I will have to prepare for another mechanism.

Yours truly,

WDG/ZG

(Signed) W. D. GROSS"

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Thereupon Defendant Gross further testified: This bundle of checks and notes marked defendant's exhibit F-8 for identification, contains all of the original notes and checks given by me in connection with the lease of the equipments in Juneau and Ketchikan.

Whereupon 12 notes, each dated May 10, 1929, each for \$656.25, each drawn on the B. M. Behrends Bank, Juneau, and becoming due at monthly inter-

(Testimony of W. D. Gross.)

vals, and also 12 notes each dated June 8, 1929, each for \$656.25, each drawn on the Miners & Merchants Bank, Ketchikan, becoming due at monthly intervals, of all of which notes defendant is maker and plaintiff is payee, and all of which notes, as they became due, were paid on the original contracts of March 28, 1929, and of which notes, except as to dates and name of respective bank, the following is a copy: [234]

“ New York, N. Y. 5/10/29

On January 10, 1930 I/WE promise to pay to the order of ELECTRICAL RESEARCH PRODUCTS, INC. Six Hundred Fifty Six and 25/100  
.....Dollars with interest at the rate of six

100

percent (6%) per annum from 5/10/1929 Payable at B. M. BEHREND'S BANK, JUNEAU, ALASKA. The Chase Natl. Bank of The City of New York — 53166 — Collections.

Value Received

This note is one of a series of 12 notes totalling in the aggregate the sum of \$7,875.00 and in the event that any of the notes in said series is not paid us and when the same becomes due all of the said notes shall forthwith become due and payable.”

W. D. GROSS, Individual

(Signed) W. D. GROSS

together with said Banks' memoranda of payments thereof, and also three checks in form as follows:

(Testimony of W. D. Gross.)

“The B. M. Behrends Bank,  
Juneau, Alaska.

Juneau, Alaska, July 28, 1928.

Pay to the Order of Electrical Research Products,  
Inc., One Thousand thirty dollars (\$1130.00)

Coliseum Theatre, Juneau  
W. D. GROSS, Manager.”

“The B. M. Behrends Bank,  
Juneau, Alaska.

Ketchikan, Alaska, July 28, 1928.

Pay to the Order of Electrical Research Products,  
Inc., One Thousand thirty dollars (\$1130.00)

Coliseum Theatre, Ketchikan  
W. D. GROSS, Manager.”

“The Miners & Merchants Bank,  
Ketchikan, Alaska.

Ketchikan, Alaska, June 5, 1929.

Pay to the Order of Electrical Research Products,  
Inc., One thousand four hundred ninety five dollars  
(\$1495.00)

Coliseum Theatre, Ketchikan  
W. D. GROSS, Manager.”

were offered in evidence by defendant, to which plaintiff objected [235] upon the ground that they were incompetent, irrelevant and immaterial and that neither defendant's first or fourth affirmative defenses, nor his second and fourth counterclaims state facts sufficient to constitute legal duress;

(Testimony of W. D. Gross.)

which objection by the Court was overruled, to which ruling plaintiff then excepted, and said notes, memoranda and checks were received in evidence and marked

DEFENDANT'S EXHIBIT F-8.

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Thereupon defendant Gross further testified: There has never been any regular airplane service between Juneau and Ketchikan and the only planes flown between those cities have been private planes; I received quite a few dunning letters from plaintiff relative to these service charges; plaintiff's attorney Robertson wrote letters making demand upon me for payment of them before the replevin suit was brought and he wrote me this letter of February 7, 1931; I never paid him anything on the strength of it.

Whereupon Robertson's letter to Gross, dated February 7, 1931, was received in evidence subject to plaintiff's same general objection, marked

DEFENDANT'S EXHIBIT F-9,

and reads as follows:

(Testimony of W. D. Gross.)

EXHIBIT F-9

“R. E. ROBERTSON

Attorney-at-Law

200 Seward Building

Juneau, Alaska

February 7, 1931.

Mr. W. D. Gross,

Coliseum Theatre,

Juneau, Alaska.

Dear Sir:

Re: Electrical Research Products, Inc.

Referring to your Mr. Tuckett's conversation with me on January 10th last in which he claimed that \$500.00 had been paid on the above account on or about November 1st last, and his promise to pay a further \$500.00 on account during the week commencing January 11th last, and also Mr. Tuckett's subsequent statement on January 19th that on that day he was sending a check to you in Seattle in the sum of \$1314.11, for you to sign so that it could be paid on these accounts:

No payment so far has been made on these [236] accounts, and I am informed that the correct amounts of the accounts are as follows:

Coliseum Theatre, Juneau, Alaska,	
through December 13th, 1930.....	\$890.00
Coliseum Theatre, Ketchikan, Alaska,	
through December 13, 1930.....	924.02

In addition to the above amounts there is also a weekly service charge of \$29.75 at each theatre from

(Testimony of W. D. Gross.)

December 13, 1930, to this date, or a further charge of \$238.00 at each theatre. This service charge is made in accordance with the letter of September 4, 1929, which Mr. Gross accepted and of which I have now been furnished a copy.

The total amount in which you are now delinquent therefore, is \$2290.11. Demand is made upon you for the immediate payment thereof and unless so paid on or before two o'clock, February 9, 1931, suit will be promptly instituted to enforce payment thereof.

I am enclosing a copy of this letter to Mr. Tuckett so that he may be advised thereof; inasmuch as he has previously come to see me on your behalf in relation to these accounts.

Yours very truly,

(Signed) R. E. ROBERTSON

RER:H

CC to Mr. Tuckett."

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Whereupon the following proceedings were had:

“Q. What, if anything did he (Mr. Robertson) do in the way of bringing suit against you?

A. He filed suit for the amount of money he wanted to recover.

Q. What else did he do?

A. He brought suit.

Mr. ROBERTSON: If this is an attempt to bring in any issues in the attachment suit I



(Testimony of W. D. Gross.)

object as incompetent, irrelevant and immaterial. The attachment suit is not at issue in this case under the pleadings or otherwise.

The COURT: I don't know the purpose. Read the question (Question read.)

Q. If anything, what else did he do in relation to this matter of collecting service charges?

A. He filed suit against me and I put up a bond.

Mr. ROBERTSON: Object as not responsive.

The COURT: It is part of the answer.

Q. What else did he do in connection with filing that suit?

A. He replevined the machines the next day.

Q. Did he attach anything? [237]

A. Yes, he attached the box office.

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial and not within the issues of this suit. There is no allegation that anything in the attachment suit was wrongful.

The COURT: The jury will be instructed at this time that the defendant in this case doesn't claim anything by reason of anything that grew out of the attachment. That has nothing to do with this particular suit.

Mr. ROBERTSON: Exception.

(Testimony of W. D. Gross.)

Q. Mr. Gross, what happened, if anything?

A. Mr. Robertson attached the box office in Juneau and also in Ketchikan, before he filed suit, before he brought the papers in.

Q. He attached your box office in those places?

A. Yes.

Q. What, if anything, did you do?

A. I went to see Si Hellenthal and told him about it.

Mr. ROBERTSON: We make the same objection about that.

The COURT: It may be received on the same basis.

Mr. ROBERTSON: Exception.

A. I released the attachment by putting a bond up.

Q. By putting up a bond?

A. Yes sir."

Thereupon defendant Gross further testified: Robertson wrote me this letter of March 26, 1931, which I received about the same date as the letter is dated.

Whereupon Robertson's letter to defendant, dated March 26, 1931, was received in evidence, subject to plaintiff's same general objection, marked

DEFENDANT'S EXHIBIT F-10,

and reads as follows:

(Testimony of *W. D. Gross*.)

“Exhibit F-10

R. E. Robertson  
Attorney-at-Law  
200 Seward Building  
Juneau, Alaska

March 26, 1931.

Mr. *W. D. Gross*,  
Juneau, Alaska.

Dear Sir:

[238]

On account of your failure to comply with the terms of that certain written contract entered into on March 28, 1929, between you and the Electrical Research Products, Inc., and subsequently mutually modified on or about September 4, 1929, in respect to that company's granting you a non-exclusive, non-assignable license to use in your theater at Juneau, Alaska, certain equipment more particularly designated as “Type 2-S equipment designed for use with two simple projectors for film and disc reproduction” for the electrical reproduction of sound in synchronization with, or as incidental to, the exhibition of motion pictures, or any performance given in conjunction therewith, and of your failure to perform the terms of a similar agreement, similarly modified, covering similar equipment in your theatre in Ketchikan, Alaska, and in view of your default in performing the terms of these agreements both in respect to your Juneau and Ketchikan theaters, on behalf of the Electrical Research Products, Inc., I hereby make demand upon you for the immediate return to it of the aforesaid equipment at each of said theaters.

(Testimony of W. D. Gross.)

Unless you notify me on or before Tuesday, March 31, 1931, that you will immediately return the above described equipment which is now in each of your Coliseum Theaters in Juneau and Ketchikan, action will be promptly instituted against you by the Electrical Research Products, Inc., to recover from you the possession of this equipment now in your Juneau theater and of this equipment now in your Ketchikan theater, together with damages for the detention thereof.

Yours very truly,

RER:H

(Signed) R. E. ROBERTSON''

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Thereupon defendant Gross further testified: That letter defendant's exhibit F-10 was received by me prior to the time I put up the bond; it was written after the bond was put up in the attachment suit. After receiving that letter I saw Robertson and told him that the bond was put up, why didn't they wait and see if the Court says I have to pay service charges or not; he claims he is the Court and will take this into his hands and he said if I don't pay the money right off he would tear the machines out; that is all the conversation I know; I went to my office and talked to my manager and he told me he would go see Robertson and see what he could do, and he came back and he advised me to take the first boat and go outside and buy other machines; the boat was in port, I took the boat, left for Seattle,

(Testimony of W. D. Gross.)

wired Universal High Power to have two machines ready, one for Juneau and one for Ketchikan. [239]

Whereupon the following proceedings were had:

“Q. Why did you go there to buy two new machines?”

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial.

The COURT: It may be received on the same theory as this other testimony.

Mr. ROBERTSON: Exception.

A. I received a letter from Mr. Robertson—that he was going to replevy the machines, so I immediately took the boat and wired Seattle to have two machines ready, one for Juneau and one for Ketchikan; and to install it here in Juneau and Ketchikan to prevent shut-downs.”

Thereupon Witness Gross further testified: If the machines were replevined, I would have to close the house up; I paid cash for the two machines, buying them outright from Universal High Power; I couldn't procure immediately any other machines except by waiting two or three months; I installed those machines, one in Juneau and one in Ketchikan.

Whereupon Defendant Gross was asked the question by his counsel: “What did you pay for those machines?”, to which plaintiff objected on the ground it was incompetent, irrelevant, and immaterial, which objection was overruled and to which plaintiff excepted; Witness Gross then answered, “\$2,500.00, more or less”.

(Testimony of W. D. Gross.)

Thereupon two checks, both drawn on The B. M. Behrends Bank of Juneau, Alaska, by defendant, in favor of Universal High Power, one dated April 4, 1931, for \$1,000.00, and one dated April 10, 1931, for \$1,540.00, marked

DEFENDANT'S EXHIBIT F-11,

were received in evidence, over plaintiff's objection that they were immaterial, which objection was overruled and to which ruling plaintiff excepted.

Thereupon Witness Gross further testified: Those two checks, defendant's exhibit F-11 are in my own handwriting and paid for those two machines that I bought.

Whereupon the following proceedings were had:

[240]

“Q. Did you have any other additional expenses in connection with these machines?

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial and not a proper element of damages in this case.

The COURT: It may be admitted.

Mr. ROBERTSON: Exception.

A. I had freight.

Q. Did you pay freight on these machines?

A. Yes.

Q. How much?

A. I can't exactly tell until I look my books over.

(Testimony of W. D. Gross.)

Q. Did you pay any more money for extra parts of these machines?

A. Yes.

Q. How much?

A. I can't tell off-hand.

Q. Did you pay anything for installation charges?

A. Yes sir.

Q. How much?

Mr. ROBERTSON: Same objection.

The COURT: Same ruling.

Mr. ROBERTSON: Exception."

A. I can't tell just exactly what the installation amounted to.

Q. You would have to look that up too, would you?

A. Because the Western Electric Company too——

Q. Mr. Tuckett will probably know about that?

A. Yes."

Thereupon Witness Gross further testified: After I brought these machines up to Juneau, I had one day of dark house in Juneau and the next day I started to run on the new equipment; they jerked out the old equipment and sent it to Los Angeles; Robertson served papers on me in the replevin suit.

[241]

Whereupon the following proceedings were had:

“Q. What was done under the replevin writ at that time, in your presence?

(Testimony of W. D. Gross.)

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial.—Not the best evidence.

Mr. HELLENTHAL: We can impeach the writ of the Marshal, if there is anything to impeach upon it. I don't know, there may be.

The COURT: He may state what was done.

A. Mr. Robertson and two deputies and Mr. White come into the office and wanted me to open up the operating booth. I refused to let them in and Mr. Robertson told them to get crow bars and open up the door.

Mr. ROBERTSON: Object as not responsive.

The COURT: The latter part of his answer will be stricken.

Q. Mr. Gross, what was done, in your presence, in connection with the taking away of these machines?

A. Mr. Robertson and the two deputies and Mr. White asked me to open the door to the operating booth to get the machines out.

Q. Did you have any conversation with either or both of them?

A. I asked Mr. Robertson to give me time. Mr. Robertson stated no more time would be given, they would have to have the machines at once and wanted the two deputies to go into the operating booth and jerk the machines out. After they started to break open the door we



(Testimony of W. D. Gross.)

opened the door to the operating booth and they took the machines out.”

Thereupon Defendant Gross testified further: I also hired Witnesses Dahlnier and Clayton, independent installation engineers, one for Juneau and one for Ketchikan, and brought them here, the manager hired them in April, 1930, stationed them in different places to install the machines and take care of them; they went around my circuit of seven theatres; I kept them in Juneau and Ketchikan not at all times, only when it was necessary; the extent of my schooling was as far as the eighth grade; I remained in Seattle two weeks after signing those modifying contracts, plaintiff's exhibits Nos. 2 and 4, and then came home stopping off at Ketchikan, arriving in Juneau on about the same day or day before I wrote to Gage my letter, defendant's exhibit F-13; up to that time I hadn't been in Juneau but had been on the circuit. Mrs. Gross, who was with me, did not stop in Ketchikan but went on to Juneau. [242]

Thereupon the following proceedings were had:

“Q. Had you ever authorized Mr. Tuckett to make any service payments, any payments of service charges?

A. No.

Q. Neither then or any other time?

A. No.

Mr. ROBERTSON: Object as leading.

(Testimony of W. D. Gross.)

The COURT: It was leading, but it doesn't amount to anything."

Thereupon Witness Gross further testified: I did not know at that time what effect the threats that Gage had made had upon the legality of the contracts, I first learned that from Simon Hellenthal in April or May, 1930, I am not sure about the date. I meant by "No Court would sustain the contract" in my letter, defendant's exhibit F-3, that we didn't have no service and if I could prove it I didn't think the Court would uphold it.

Thereupon plaintiff's letter to defendant, dated August 7, 1929, was received in evidence, marked

DEFENDANT'S EXHIBIT G,

and reads:

"Exhibit G

ELECTRICAL RESEARCH PRODUCTS, INC.

Subsidiary of

WESTERN ELECTRIC COMPANY,

INCORPORATED

New York

August 7, 1929.

Mr. W. D. Gross,  
Coliseum Theatre,  
Juneau, Alaska.

Dear Sir:

In order that your theatres at Juneau and Ketchikan may be more readily protected against accidental shut-downs, we recommend that you place an

order with us to carry additional spare parts in each one of your theatres, as follows:

- 2 Spare Tungar Bulbs #189048 to each theatre .....\$ 8.00 each
- 1 708-A Motor Control (to be held at either town) ..... 500.00
- 1 11-A Connecting Block to each theatre .17
- 1 702-A Fader to be held at either town 265.00

[243]

We will furnish each one of these theatres with an electric soldering iron without additional charge, to be held in the spare parts cabinets for use on our equipment.

Although we carry all of these items in our Seattle stock as regular emergency replacement equipment, it would take so long to get them to Juneau and Ketchikan that the shortage of these items might at some time cause you and your audiences inconvenience, if they were not readily available.

Yours very truly,

NL-S Western Division Manager.”



Thereupon Defendant Gross further testified: Witness Lawrence was plaintiff’s service engineer, traveling around Alaska.

Thereupon the following proceedings were had:

(Testimony of W. D. Gross.)

“Q. What, if anything, did Mr. Lawrence do in taking out the machinery?”

Mr. ROBERTSON: I make the same objection, the return of the Marshal’s writ is the best evidence of what was done about replevining the equipment. There is no allegation here concerning malicious issuance of a Writ of Replevin;—incompetent, irrelevant and immaterial.

The COURT: It will be received on the same basis as the other testimony, as part of the general course of events.

Mr. ROBERTSON: Exception.

A. Mr. Lawrence asked Mr. Robertson that he should wire the States for instructions. Mr. Robertson told him he had his instructions and for him to start taking out the equipment.

Q. What, if anything, did Mr. Lawrence do?

A. After the opening of the door he went in and started to dismantel the equipment.

Q. What do you mean by “dismanteling”?

A. Well, started to pull it out, to pull out the parts which belonged to them, their equipment.

Q. Did they take it apart?

A. Took it all apart, dismanteled it and put it up in the balcony.

Q. When was that done by Mr. Lawrence?

A. The same day about 4 o’clock.

Q. The same day about 4 o’clock?

(Testimony of W. D. Gross.)

A. The same day about 4 o'clock, and at the same time started [244] dismanteling the machinery.

Q. After it had been dismanteled by Mr. Lawrence, could you assemble it?

A. No sir.

Mr. ROBERTSON: Same objection.

Q. Could you, or any of your men, re-assemble it?

A. No.

The COURT: I think it may go in for what it is worth.

Mr. ROBERTSON: Exception.

A. Couldn't do it without a blueprint.

Q. Did you have a blueprint?

A. No.

Q. Mr. Gross, after the equipment was taken out what is the first thing you did?

A. I started to install my own machines.

Q. You started to install your own machine that you had brought up?

A. That I had brought up—the same day.

Q. What did you do in that connection?

A. Had my engineer to install it. I wired for him. He was at that time at Haines.

Q. Who was that?

A. Clayton.

Q. One of the men you brought up previously for such jobs?

A. Yes.

(Testimony of W. D. Gross.)

Q. Did Mr. Clayton come down?

A. Yes, he was there the same day—he was there prior to it.”

Thereupon Defendant Gross further testified: Clayton installed the new equipment; my Juneau show was closed one night, then I opened the show with the new equipment, by which I mean the new equipment I bought in Seattle, and shipped up here just before that.

Whereupon the following proceedings were had:

[245]

“Q. How did the equipment you have now installed, which you speak of as the new equipment, compare with the old equipment that had been torn out—as to efficiency?”

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial.

The COURT: It may be admitted. It is part of the allegations of the answer.

Mr. ROBERTSON: Exception.

A. The equipment wasn't the same as the Western Electric Company. It was cheaper equipment, and that was the only equipment at that time I could get.

Mr. ROBERTSON: I move to strike that last as not responsive.

Mr. HELLENTHAL: He already testified to that before.

The COURT: It is already in the record.

(Testimony of W. D. Gross.)

A. That is the only equipment I could get.

Mr. ROBERTSON: Object as not responsive.

Mr. HELLENTHAL: (to witness) Confine your answers to the question as near as you can. I will ask you about the other things later.

Q. How did it compare as to quality. Was the sound as good or was it not as good?

A. No, the sound was bad.

Mr. ROBERTSON: Objection.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

Q. How bad?

A. Very bad—lost all my business. We started to lose our business.

Q. The sound was very bad?

A. Yes.

Q. What did you do in the way of trying to remedy the sound and make it better?

A. Tried some other equipment; we borrowed some better equipment—after—and couldn't do it any good.

Q. What effect did that have on your business?

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial.

The COURT: I think the question is competent; he may answer. [246]

Mr. ROBERTSON: Exception.

(Testimony of W. D. Gross.)

Q. Now, Mr. Gross, what effect, if any, did the fact that you had inferior equipment in your theatre have upon the business of the theatre?

Mr. ROBERTSON: May I ask that my objection be considered as going to all this line of testimony?

The COURT: Very well.

A. Lost business. It began to go down, lost business.

Thereupon Witness Gross further testified: My business gradually went down; I done all the improvements I could to get this equipment up to standard; I couldn't do it; the effect upon the profits was that I considered I lost from about two to three thousand dollars a month in Juneau and the same in Ketchikan; I lost that much; my moving picture theatre business had always been profitable; never had any unprofitable business until this machinery was taken out; during the time that the Western Electric equipment was in my Juneau theatre I made money; after it was taken out I started losing money.

Whereupon the following proceedings were had:

“Q. What effect upon your financial condition did the removal of that equipment have?”

A. Well, we went back on all the taxes, we drew all the money from all the small theatres, five theatres, we went back on the interest on the money we owed B. M. Behrends, —\$60,000.00 at that time, and rent money at



(Testimony of W. D. Gross.)

that time \$900.00 a month, we used that to keep the Juneau and Ketchikan Coliseum theatres going until we leased it to B. F. Shearer.

The COURT: Is it understood these objections apply to each of these questions?

Mr. HELLENTHAL: Yes, that is agreeable.

The COURT: The last one will be stricken, as too remote.”

Thereupon Defendant Gross further testified: The removal of the equipment in my Ketchikan theatre had the same effect as in Juneau; I had done the same there as I had done in Juneau, bringing up the equipment from below; the character of the sound produced by that new equipment in Ketchikan as compared with the [247] Western Electric equipment that was taken out, was bad; the effect upon my Ketchikan business was I started to lose business and had to turn over the theatres; it went down until we had to turn over my Ketchikan theatre, unable to operate; it had paid at all times up to that time, both before and after the installation of the sound equipment; never was a time when the Ketchikan theatre was not a profitable enterprise; never made any profit after the Western Electric equipment had been taken out; I lost in profits by reason of the removal of that equipment from Ketchikan theatre from two to three thousand dollars a month in each theatre; after that I turned my theatres over to B. F. Shearer Company on a lease.

(Testimony of W. D. Gross.)

Whereupon the following proceedings were had:

“Q. Did you have any arrangement with B. F. Shearer for the sharing of profits, that is what I am trying to get at?

A. Yes sir.

Mr. ROBERTSON: Same objection.

Mr. HELLENTHAL: The purpose is to show immediately when other Western Electric Company theatre equipment was installed by Shearer and Gross the thing began to pay again.

The COURT: It may be received for that purpose.

Q. Did you have any arrangement with Shearer under which you shared the profits of those theatres?

A. Yes sir.

Mr. ROBERTSON: Same objection.

The COURT: It may be received.

Q. What, if anything, did Shearer do in the way of installing Western Electric Equipment in these theatres after you had turned the theatres over to him?

The COURT: It may be received to show the changed conditions, if any?

Mr. ROBERTSON: Exception.

A. He threw my equipment out.

Q. What did he do about putting in Western Electric?

A. Negotiated for it and installed one at Juneau and one at Ketchikan.

(Testimony of W. D. Gross.)

Q. Was that the same kind of equipment that had been taken out of your theatre?

A. Yes.

Q. What effect, if any, did that have on your business?

A. The business picked right up. [248]

Mr. ROBERTSON: Same objection, if the court please.

The COURT: He may show the changed condition, if any. He can't go any further.

Mr. ROBERTSON: Exception.

A. Business went up.

Q. Did Shearer install Western Electric equipment at once?

A. Took about two months after he got permission from me.

Q. During the time he operated on the old equipment what was the condition of the business?

A. Couldn't make any money.

Mr. ROBERTSON: Same objection, if the court please.

The COURT: Objection overruled.

Mr. ROBERTSON: Exception.

A. He held it down for two months and when he found out he can't make any money on my equipment—

Mr. ROBERTSON: Object as not responsive.

(Testimony of W. D. Gross.)

Q. Answer my question. While he had the old equipment did he make any profit?

A. No.

Q. When he got the new equipment, in, the Western Electric equipment, did he make any profit?

A. Yes.

Q. Immediately on the restoration of the old equipment?

A. Yes."

Whereupon Defendant Gross testified further: I put this old equipment I brought up from Seattle in storage; it didn't have any value at that time as they had modernized the equipment and it was obsolete, had no junk value, no market for the old equipment at all and the freight would cost more than the junk would pay for; I did not keep my books myself my bookkeeper did; I knew the condition of my banking account and of my indebtedness to the bank at that time and whether my taxes were paid, and the condition of other matters in relation to my business that came under my personal observation; while I had the good equipment I paid [249] interest on my indebtedness to the bank right along but after my equipment was taken out I did not have money to pay it either, same way about taxes; we tried to avoid all expenses to keep the Coliseum at Juneau going; I had five other theatres besides the Juneau and Ketchikan theatres

(Testimony of W. D. Gross.)

and they were all paying; and their profits went to keep up the Juneau and Ketchikan Coliseum theatres; [250] I had \$900.00 to \$1,200.00 a month in rent and that also went to keep the Juneau and Ketchikan theatres open.

### Cross Examination

Thereupon Defendant Gross testified further: I have no idea what profits I have made from the Coliseum theatre in Juneau since Shearer took it over about May 1, 1933, but I was supposed to get 40% of it; I have no idea until I look at the books and I haven't looked at the books in preparation for this trial, the bookkeeper has the books; I receive the profits every three months, the last time was three months ago when I received two or three thousand dollars as my share; it might be more; that was from the two theatres; I have Shearer's statement for the month of December, 1934, showing how much money they paid out and took in, showing they made \$80.00 at the Coliseum theatre that month and the Capitol Theatre in Juneau made \$1,505.71, actual profit; I won't receive my share of it until next month; we divide every three months; my share of the net profits in the Coliseum Theatre is 40%; and my share of the profits is 40% from the Capitol Theatre in Juneau; I have a statement here from Shearer.

Whereupon plaintiff requested defendant to produce the statement, which was the plaintiff's exhibits Nos. 29-A and 29-B, and reads as follows:

(Testimony of W. D. Gross.)

## "EXHIBIT 29-A

JUNEAU EMPIRE THEATRES, INC.

1934

Capitol Theatre Juneau (in pencil)

	<u>November</u>	<u>December</u>
Receipts:		
Box Office	4,208.10	4,157.32
Slide Rental	1.36	
	<u>4,209.46</u>	<u>4,157.32</u>
		[251]
Expenses:		
Film Rental	1,137.70	1,060.00
Freight	59.60	51.12
Advertising—Bill Poster	169.10	142.22
Advertising—Newspaper	283.70	264.00
Advertising—Miscellaneous	61.60	87.74
Salary—Manager	166.66	166.70
Salary—Operator	102.00	102.00
Salary—Miscellaneous	372.60	402.25
Projection Room and House Supplies	38.78	40.42
Rent	200.00	200.00
Heat	23.10	46.20
Light	150.46	151.00
Telephone and Telegraph	5.16	21.45
Office Supplies	1.04	8.90
Postage		3.88
Insurance	22.04	22.04
Depreciation	41.88	47.77
Maintenance	73.60	
Bank Charges	10.49	7.02
Tax on Checks	1.37	1.15
Rental on Sound Equipment	80.00	80.00
Taxes and Licenses		56.75
Rental of Uniforms	6.00	9.00
	<u>3,006.88</u>	<u>2,971.61</u>
Net Profit	1,202.58	1,185.71

## SUMMARY

Capitol	1,202.58	1,185.71
Coliseum	—350.50	—80.00
Total Net Profit	<u>852.08</u>	<u>1,105.71</u>

## EXHIBIT 29-B

## JUNEAU EMPIRE THEATRES, INC.

1934

Coliseum Theatre      Juneau (in pencil)

	<u>November</u>	<u>December</u>
Receipts:		
Box Office	2,317.95	2,386.40
Slide Rental		75.00
	<hr/>	<hr/>
	2,317.95	2,461.40
<hr/>		
Expenses:		
Film Rental	1,162.85	1,082.75
Cost of Added Attractions	85.50	
Freight	29.80	25.55
Advertising—Bill Poster	114.03	71.11
Advertising—Newspaper	162.95	182.70
Advertising—Miscellaneous	27.43	71.88
Salary—Manager	83.34	83.30
Salary—Operator	90.00	90.00
Salary—Miscellaneous	297.90	317.25
Projection Room and House Supplies	16.31	5.00
Rent	200.00	200.00
Heat	30.13	43.93
		[252]
Light	104.70	119.75
Water	2.00	2.00
Telephone and Telegraph	5.14	21.44
Office Supplies	1.03	8.89
Postage		3.87
Insurance	27.12	27.12
Maintenance	115.00	
Bank Charges	10.49	7.01
Tax on Checks	1.37	1.15
Rental on Sound Equipment	95.36	119.20
Taxes and Licenses		48.50
Rental of Uniforms	6.00	9.00
	<hr/>	<hr/>
	2,668.45	2,541.40
Net Profit or Loss	—350.50	—80.00''

(Testimony of W. D. Gross.)

Thereupon Defendant Gross further testified: Exhibit No. 29-B covers the months of November and December, 1934, and shows a loss \$80.00 for the Coliseum Theatre in Juneau for December and \$350.50 for November; when I spoke about getting profits from Shearer I also included therein profits made from the operation of the Capitol Theatre; under the agreement with Shearer I receive one-third of the profits of the Revilla and Coliseum Theatres in Ketchikan; for December, 1934, the Ketchikan Coliseum Theatre made a profit of \$287.00 and for November, 1934, \$1634.88, of which I get one-third. These are the Statements:

Whereupon plaintiff offered in evidence the statements produced by defendant, which were then received in evidence, marked plaintiff's exhibits 30-A and 30-B, respectively, and read:

“EXHIBIT 30-A

ALASKA EMPIRE THEATRES, INC.

1934

	Ketchikan (in pencil)	
	November	December
Coliseum Theatre		
Receipts:		
Box Office	3,481.15	3,170.76
Slide Rental	200.00	
	<hr/> 3,681.15	<hr/> 3,170.76
Expenses		
Film Rental	711.02	628.32
Cost of Added Attractions	53.25	488.00
Freight	30.95	29.74
Advertising—Bill Posters	26.26	38.33



(Testimony of *W. D. Gross.*)

	<u>November</u>	<u>December</u>
Advertising—Newspapers	96.30	104.62
Advertising—Miscellaneous	61.70	88.58
Salary—Manager	125.00	100.00
		[253]
Salary—Operator	90.00	90.00
Salary—Miscellaneous	266.30	239.65
Projection Room and House Supplies	1.25	28.62
Rent	200.00	200.00
Heat	60.72	74.92
Light and Power	54.30	62.95
Telephone and Telegraph	20.04	21.47
Office Supplies	1.13	1.81
Postage	3.25	5.00
Taxes and Licenses		47.79
Tax on Checks	1.27	.79
Depreciation on screen and carpet	33.21	33.21
Insurance	31.73	31.73
Sound Rental	122.76	153.45
Maintenance	20.89	59.43
Rental of Uniforms	6.00	8.50
Silver Night Expense	102.80	125.00
Water	5.70	5.70
	<u>2,125.83</u>	<u>2,667.61</u>
Net Profit	1,555.32	503.15

## SUMMARY

Revilla	79.56	—215.32
Coliseum	1,555.32	503.15
	<u>1,634.88</u>	<u>287.83''</u>

(Testimony of W. D. Gross.)

## "EXHIBIT 30-B

## ALASKA EMPIRE THEATRES

1934

Revilla Theatre      Ketchikan (in pencil)

	<u>November</u>	<u>December</u>
Receipts:		
Box Office	1,891.60	1,568.39
Slide Rental	72.50	110.00
	<hr/>	<hr/>
	1,964.10	1,678.35
<hr/>		
Expenses:		
Film Rental	716.39	636.75
Freight	30.94	29.72
Advertising—Bill Poster	26.26	38.31
Advertising—Newspaper	79.99	81.80
Advertising—Miscellaneous	84.24	156.56
Salary—Manager	125.00	100.00
Salary—Operator	75.00	75.00
Salary—Miscellaneous	241.80	234.60
Projection Room and House Supplies	22.72	11.80
Rent	100.00	100.00
Heat	30.00	30.00
Light	35.30	39.80
Water	3.35	3.35
Telephone and Telegraph	20.09	21.45
Office Supplies	1.13	1.81
Postage	3.25	5.00
Taxes and Licenses		36.54
Tax on Checks	1.19	.69
Rental on Sound Equipment	100.00	100.00
Depreciation	6.71	10.06
		[254]
Insurance	15.18	15.18
Employees Bond		30.00
Silver Night Expense	102.80	125.00
Maintenance	57.20	1.75
Rental of Uniforms	6.00	8.50
	<hr/>	<hr/>
	1,884.54	1,893.67
Net profit or loss	79.56	-215.32

(Testimony of W. D. Gross.)

Thereupon defendant Gross further testified: During November and December, 1934, Western Electric equipment was in the Juneau Coliseum Theatre and R. C. A. equipment was in the Juneau Capitol Theatre; I am unable to give a single month of my own knowledge in which I made \$3,000.00 profits from the operation of the Juneau Coliseum Theatre during the time Western Electric equipment was in there, I don't know anything about it; we have a record on it and the bookkeeper is working on it and will bring it into Court; I swore in my amended answer in this suit before it was filed that I lost \$2,000.00 a month profits from the Juneau Theatre; I gave my deposition in this suit March 16, 1932, before Deputy Clerk Leivers, and in accordance with plaintiff's demand; I had a statement prepared by Jack Davis and gave it to my attorney Si Hellenthal, but I have no recollection of it, but I know plaintiff's attorney Robertson got a statement on the income tax account, but that wouldn't give the right statement; I have a copy of the income tax statement now but the bookkeeper will bring them to the Court; I don't have them with me; I don't know how much income I make in a year, all I know is we paid taxes of \$3,000.00 a year for 1929 and 1930, while we had the Western Electric machines; I don't know exactly what my total receipts from the Juneau Theatre were from April 1, 1930, to March 31, 1931; might run \$48,000.00 close to \$50,000.00; I have no idea what my expenses or what my profits

(Testimony of W. D. Gross.)

were during that period; I have no idea, until the bookkeeper can present his statements, of a single month during that period when I made as much as \$2,000.00 a month profit, but I never made a loss; I can't give from my own recollection, the amount of profit I made for any single month during that period [255]

I didn't know anything about the law when I signed those contracts, plaintiff's exhibits Nos. 2 and 4, and didn't know anything about the law or my rights.

Whereupon the following proceedings were had:

Q. You told Jack Hellenthal this morning you first consulted Si Hellenthal when?

A. When you filed the papers for recovery of the service charges.

Q. That is the first time you ever went to a lawyer about it?

A. Yes.

Q. You never consulted any lawyer about it prior to that time?

A. It wasn't necessary.

Q. When did you first decide that these contracts, plaintiff's exhibits "2" and "4" were no good, they weren't valid? When did you first decide that?

A. The original contracts?

Q. Yes, the originals of these contracts, "2" and "4"—when did you decide they were no good?

A. This wasn't the original contract.

(Testimony of W. D. Gross.)

Q. Those are copies.

A. No, this was not the original contract; it was a supplemental contract for me to sign because they said——

Q. Never mind what they said. When did you decide the supplemental contracts were no good and were not valid?

A. I signed this contract——

Q. I asked you when you decided they were no good, and ask you to answer that question.

A. When I seen my lawyer he looked it over.

Q. He told you they were no good?

A. At that time I felt I had to sign it.

Q. I am asking you when you decided these supplemental contracts “2” and “4” were no good. When did you decide that?

A. I can not remember just the date.

Q. Didn't you think so at the time—they were no good?

A. They threatened me.

Q. Answer the question—Didn't you think at the time they [256] were no good?

A. I have no knowledge as to that, if I thought of anything I wouldn't sign it.

Q. How soon after you signed them did you reach the conclusion they were no good?

A. When I got back to Juneau I felt sorry I signed them.

Q. In your own mind you decided then they were no good. That was before you ever even

(Testimony of W. D. Gross.)

consulted any lawyer, you decided they were no good?

A. At that time, yes.

Q. That was after you returned to Juneau on November 10th, 1930?

A. Yes sir.

Thereupon defendant Gross further testified: even before I consulted any lawyer, I decided they were no good; when I signed that letter of February 17, 1930, defendant's exhibit F-4, I meant by the statement "No court will uphold this agreement when the service has been as it have in the past" that when I signed I was obligated to pay \$30,000.00 more for service when I didn't get it, that is what I meant; I had got service at no time up to that time; that wasn't because I was away, I was quite often here; I know plaintiff's engineers had been coming here, to inspect the machinery and sell merchandise; I had signed one of these reports and got a copy of it and still have the copy; when I said that I didn't receive any reply to my letters, defendant's exhibits F-4 and F-5, I meant that my office might have received a reply but I didn't; I don't know whether we received any reply or not but I don't think so; I never did any business with plaintiff in San Francisco; that was an error of mine or my manager in sending my letter of March 28, 1930, Defendant's Exhibit F-5, to San Francisco, but the letter never came back; I have no knowledge of any reply to my letter of September 15, 1930, defendant's exhibit F-7; my

(Testimony of W. D. Gross.)

manager might have answered [257] that letter, defendant's exhibit F-6; I can't recollect whether or not I answered it; I don't know whether I was in Juneau in June, 1930; I know we received that letter, defendant's exhibit F-6, but I don't know whether or not we ever answered [258] it; if Tuckett answered it he never showed me any purported copy of it.

Whereupon the following proceedings were had:

“Mr. ROBERTSON: I would like to ask at this time if counsel have the books we mentioned this morning.

Mr. HELLENTHAL: The books?

Mr. ROBERTSON: Yes.

Mr. HELLENTHAL: No. We have those books, and will exhibit them to counsel, but we are not going to bring them up here. We will offer them in evidence when the proper time comes, but I don't think counsel can get head or tail of them until the bookkeeper explains them.

Mr. ROBERTSON: We made demand for the production of the books before the trial started, and are entitled to see the books and not wait until the last moment.

Mr. HELLENTHAL: We will give them to you for inspection any time you want.

Mr. ROBERTSON: What time will it be convenient?

Mr. HELLENTHAL: Whenever it suits your convenience, but I suggest you wait until

(Testimony of W. D. Gross.)

the bookkeeper explains them, so you will know something about them.

Mr. ROBERTSON: We may have just as good bookkeepers as Mr. Gross.

Mr. HELLENTHAL: I have doubts you have a bookkeeper that knows as much about these books as the man that kept them; that is the point I am trying to get at.

Mr. ROBERTSON: That gives us no opportunity to challenge Mr. Gross on his own books.

Mr. HELLENTHAL: Mr. Gross knows nothing about them.

The COURT: That is true. I suppose under the circumstances you can reserve that part of the cross-examination until you get possession of the books.

Mr. HELLENTHAL: I will explain to counsel we have made a summary from the books and all the items he is inquiring about, profit and loss, including Shearer, which will be produced in evidence at the proper time and counsel will be given an opportunity to examine the books and check them up.

Mr. ROBERTSON: Of course we want to see the books ourselves and check the summary as shown by the books."

Thereupon Witness Gross further testified: I don't know whether I ever went to see Attorney



(Testimony of W. D. Gross.)

Robertson in response to his letter, defendant's exhibit F-9; I think the bookkeeper did; I don't know anything about whether or not Tuckett also received a [259] copy of it; I recollect I called on Attorney Robertson next day after receiving his letter, defendant's exhibit F-10; I don't know what day of the week or month; I don't know whether I went to see him or telephoned him; I don't remember anything about it; I told him that I didn't owe these people any money and nothing else; I didn't tell him that until receipt of that letter, I had known nothing about this controversy and my manager had concealed it from me, but I did tell him that I had a deal on with Captain Lathrop by which he was going to buy my entire string of six theatres; I have no idea what I told him; I don't remember what I said, but Captain Lathrop offered \$150,000.00 for the Juneau and Ketchikan Theatres; I didn't tell Robertson I wanted further time within which to pay plaintiff's bill or within which I might go to Seattle to see Captain Lathrop or that either Captain Lathrop or I would wire him the money next Monday; I didn't owe money to those people; I went to Seattle immediately after I received that letter threatening to replevin, going to Seattle the same day, and wired for two machines; I don't remember whether Robertson told me that he would give me until April 6, within which to pay the bill before he started suit; I have no recollection of it; I don't recall any wires to Robertson after I went to Seattle; the day the talkie equipment was re-

(Testimony of W. D. Gross.)

plevined, Robertson came to my Juneau Theatre with two deputy marshals and Marshal White about four o'clock, Lawrence was also there, Charles Tuckett and myself; I don't know the deputies' names; I believe that Robertson came with the deputies; I was there all the time; I was downstairs in the office but I went upstairs when the marshals tried to break in the doors; I heard Robertson tell the marshals to break in the door; Marshal White was there, he will say to which deputies Robertson said that; the booth was locked at the time; it is locked all the time after the show, and it was locked by the people who run the show that night, by the operators; don't know who was running the show that night as I had several of them—Ned Lemieux, Charlie Tuckett, Billy Burke, Zolman Gross, and Donald Sinclair; [260] the only man present there when Robertson was there was Charles Tuckett and myself; it didn't take the deputy marshals any time to replevin that equipment, I have no idea of the time they were there; when the marshals started to break in the door, Tuckett gave them the key and Lawrence disconnected and took the equipment out; Tuckett never even touched the equipment but protected his own property; it wasn't his, it belongs to us; Tuckett did not disconnect any equipment, at least I don't think so, but I don't know, I didn't disconnect any equipment; I had the Masterphone Sound Equipment there at that time on the backstage; I never told Charlie Tuckett to throw plaintiff's equipment out in the

(Testimony of W. D. Gross.)

bay or to tear it out and throw it in the bay; Clayton was in Juneau at the time but he wasn't upstairs; he was my expert that he been trained for this work; I have no idea what books he trained with; I don't know anything about what he had.

I had one conversation with Witness Gage when I paid him the \$2,000.00, and the other prior to it; I had a conversation with him when I paid him \$538.00 some time in April; I had a conversation with him when I signed plaintiff's exhibits Nos. 2 and 4; Cawthorn, Gage and myself were present when I signed those exhibits on December 30, 1929; the conversation of April was held in a restaurant in Film Row but I signed the checks in Gage's office; that was the next conversation I had with Gage and was during the fore part of April, 1930; had a conversation down in a restaurant and then went to his office; Cawthorn, Gage, and myself were present, Cawthorn again being present on that occasion, he being my representative in Seattle, attending to all my business there at all times; the only threats I know about that Gage ever made were those on December 30, 1929, and April, 1930; there were no other conversations that I remember; that first conversation on December 30, 1929, Gage said that plaintiff writes him and he has to write me and he wants me to sign these contracts, otherwise you know that they pull the machines out; I had a long talk before I signed it, and he said "if a man doesn't pay for his telephone, they take [261] out the tele-

(Testimony of W. D. Gross.)

phone, the same thing will happen to you." That is all I remember; that is the entire conversation; Cawthorn was present during the entire conversation but nobody else; in the conversation of April, 1930, he called me up saying he received a bill from plaintiff and wants to know if I am going to pay it; I met him on Film Row and then went to his office. Cawthorn went out with us; during the conversation in Film Row he said he had a bill and for me to pay it so we went to his office and when we got there he said for me to pay—the same as the chicken don't lay no eggs, head is cut off, same thing they are going to do to me if I don't pay, which statement was made in the presence of Cawthorn; that is all he had to say; I never talked with Gage personally after that; the only threats Gage made were by word of mouth, never made any written threats.

Whereupon the following proceedings were had:

Q. As a matter of fact, didn't Mr. Gage tell you at that time when you signed those contracts you were going to have a man stationed regularly at Juneau and Ketchikan?

A. After I signed the contracts.

Q. Then he did tell you something more in that conversation at that time?

A. He stated previously to it, he said he was going to install a man in Juneau and Ketchikan.

(Testimony of W. D. Gross.)

Q. What did he say about that?

A. After I paid him that money he said he was going to try to persuade the company to put a man in Juneau and Ketchikan.

Q. Isn't that the reason why you paid the service charges?

A. No; because of those threats.

Q. You didn't pay the service charges for that reason?

A. No.

Q. Did you make that payment to Mr. Gage solely because of Mr. Gage's threats against you on December 30th, 1929, about what he would do about taking those talkie machines out?

A. Yes.

Thereupon witness Gross further testified: I first found out plaintiff wanted me to pay for that service when I was in the East; I didn't know about it before I went East; I went East in [262] September, 1929; I received a wire from my manager that the service bills showed up and he wants me to take it up with the Seattle Office but I didn't know anything about it; I hadn't received letters from plaintiff before I went East demanding payment of service charges and my office had not received them so far as I know.

Whereupon the following proceedings were had:

Q. Not what you know. Now, Mr. Gross, you remember you gave your deposition in the other suit, before Mr. Leivers, as Deputy Clerk,

(Testimony of W. D. Gross.)

on March 16th, 1932, in the Clerk's office, in the presence of Si Hellenthal, Bert Faulkner, Mrs. Ada Sharples and myself?

A. Yes sir.

Q. I ask you to say whether or not you didn't say at that time, "He" referring to Mr. Gage, "made that threat when I received letters to settle the service charges and after I decided to pay [263] the service charges he said before witnesses that he would see if I paid the service charges he would have a man stationed at Juneau and one at Ketchikan, on the strength of that I paid the service charges."

I ask you if you didn't make that statement in response to my question when I asked you:

"I now ask you to state, Mr. Gross, when he made that threat to you?"

A. I made——

Q. Answer the question—whether or not in response to this question I asked you at that time in the Clerk's office before Mr. Leivers as Deputy Clerk, in the presence of Bert Faulkner, Si Hellenthal and Mrs. Ada Sharples and myself I asked you the question:

"I now ask you to state, Mr. Gross, when Mr. Gage made that threat to you" and didn't you answer:

"He made that threat when I received letters to settle the service charges and after I de-

(Testimony of W. D. Gross.)

cided to pay the service charges he said before witnesses that he would see if I paid the service charges he would have a man stationed at Juneau and one at Ketchikan. On the strength of that I paid the service charges.”

I ask you—Did you or did you not make that statement at that time?

A. I might have made the statement, but I never signed it.

Q. Is that statement as reported by the reporter at that time true or false?

A. I can't recollect anything about it.

Q. You can't recollect anything about it?

A. I never had any knowledge of it.

Q. Are you able to say now whether or not that statement is true or false?

A. If I had looked over the deposition I would tell them it is incorrect.

Q. If you had looked over the deposition you would tell them it is incorrect.

A. Yes.

Q. You never came up to the court house to correct the deposition, did you?

A. You never asked me to.

Q. You never came up to the court house to correct the deposition did you?

A. You never made me sign it.

Q. Answer the question. Did you ever come up to the court house to correct it? [264]

A. No

(Testimony of W. D. Gross.)

Q. Now, then, did you in that statement say this part of it:

“He made that threat when I received letters to settle the service charges”? Did you make that part of the statement?

A. No.

Q. You did not make that either?

A. No, it was all wrong.

Q. You didn't say at that time:

“On the strength of that I paid the service charges”?

A. No, I was at that time east.

Q. I ask you to say whether at that time, in the presence of Mr. Hellenthal, Mr. Leivers, Mr. Faulkner, myself and Mrs. Sharples you didn't say:

“On the strength of that I paid the service charges.”

A. I never looked over my testimony so I don't know what I said at that time.

Q. Is that the best answer you can give to my question at this time?

A. Yes sir.

Q. I ask you to state whether or not, Mr. Gross, at the same time and place, that is, March 16th, 1932 in the Clerk's office of this court, before Mr. Leivers as Deputy Clerk, and in the presence of Mr. Faulkner, Si Hellenthal, Mrs. Ada Sharples and myself you didn't say:

“That is the only conversation—when he said for me to sign this paper” referring to those



(Testimony of W. D. Gross.)

supplemental agreements, "and pay the money, otherwise they will take the machines out or attach the machines."

I ask you whether or not you didn't make that answer in response to my question:

"Is that the only conversation you ever had with Mr. Gage where he made any threats"?

A. That is the same line. I never looked over my deposition.

Q. You are not able to answer, now, whether or not that is true or not?

A. I can't say "Yes" or "No".

Q. Didn't you at the same time and place, in the presence of the same parties, in response to my question asked there, where I asked you:

"That is the only conversation"? Didn't you answer:

"Yes, I paid him on the strength of that"?

A. Strength of what? [265]

Q. That wasn't the question. You answered: "Yes, I paid him on the strength of that"?

A. What was it on the strength of.

Q. I don't know. Wasn't that your answer?

A. I paid him because he threatened to take the machines out.

Q. That is the best answer you can make to that question, Mr. Gross?

A. Yes, to the best of my knowledge.

Tuckett didn't send the originals of plaintiff's exhibits Nos. 2 and 4, to me in the East; I never

(Testimony of W. D. Gross.)

received anything, he just wired me; I didn't take them East with me; I never saw them until I got back in Seattle when Gage showed them to me; I was quite surprised when I received those papers and when plaintiff asked me to pay service charges; I hadn't figured I would have to pay service charges; nothing had happened that led me to believe I was going to pay service charges or that plaintiff was going to ask me to pay service charges.

[266]

I was in good health, was not intoxicated and nothing wrong with me mentally on December 30, 1929.

Plaintiff's equipment was installed in my Juneau Theatre about May 10, 1929, I don't recall whether in that deposition taken on March 16, 1932, in answer to the question "Now Mr. Gross, prior to that—that would be some time about say four or five months after you got your sound reproducing equipment installed in your Juneau and Ketchikan Theatres, prior to that four or five months you never had any idea or knowledge that there were going to be any inspection charges—for inspection and for making minor adjustments—is that correct?" I answered "That is correct." I can't recollect just exactly what I said I don't know whether that is true or not, but if I looked it over I would correct it.

I am unable to state whether or not in that deposition, in response to the very next question, "You

(Testimony of W. D. Gross.)

are absolutely confident", (referring to the previous question) I answered "I am sure". I never looked the deposition over.

I never decided to have plaintiff service my theatres.

Whereupon the following proceedings were had:

Q. I call your attention to a letter written to Mr. Gage on February 10th, 1930, marked Defendant's Exhibit "F-3" and to the words in this; you say: "But after I decided on service and service was given, they have been on the bum and in fact are still on the bum." Do you still say you never decided on service?

A. Only this threat.

Q. What do you mean, you never decided on service?

A. After I signed up for \$30,000.

Q. What \$30,000.

A. In ten years, besides \$21,000.00 I paid for the machines.

Q. Did you make that statement in that letter?

A. Yes, I felt sorry——

Thereupon Defendant Gross further testified: I knew Taylor had stayed up here in the summer of 1829; he installed the machines in Juneau on May 10, 1929, and then he stayed and watched [267] those machines for a week, then he wanted to proceed to Ketchikan to install machines there and I told Charlie Tuckett to go with him; he stayed in Ketchi-

(Testimony of W. D. Gross.)

kan for a week and left Alaska the first part of July.

Whereupon the following proceedings were had:

Q. You knew a man named Albright, serviced your theatre in August or September, 1929, didn't you?

A. Yes, he inspected.

Q. He came up and serviced your theatre?

A. Come up to sell merchandise.

Q. He came up and inspected your theatre?

A. Inspection, but he didn't service.

Thereupon Defendant Gross further testified: He gave me a copy of his reports and I signed for them and got a copy at the time; I don't know anything about Knowlton being here in October, 1929, because I was building theatres at that time and gave all my attention to my theatres; that occupied my time; I don't remember Darragh being here in December, 1929, or Little; I don't know what he looks like; I don't know anything about him; sometimes I was here and sometimes I wasn't during those months; I can't recollect what part of those months I was here; I was building the Wrangell, Petersburg, Sitka, and Haines Theatres in October, November and December, 1929; I went around and visited the buildings; supplied the money, but had architects to supervise the work don't know what dates I was in those towns in October, November, and December, 1929; I went East in September,

(Testimony of W. D. Gross.)

1929; I didn't get back until December; I didn't supervise any of those theatres during that time; I don't think we started to build until afterwards; can't just remember when we did start building them but I know the theatres were in four or five months after I got the independent equipment in April, 1930; money was no object to my trying to get talkie equipment in my theatres; I was willing to spend [268] any amount of money to get them; there was other equipment on the market on April 20, 1931, but I had to wait my turn for it and there was other talkie equipment in April, 1930, when I paid Gage the check for \$538.00; but there was just one equipment at that time to take the place of Western Electric, namely RCA but that didn't require service.

Thereupon plaintiff propounded to Defendant Gross and he answered the following questions:

“Q. Didn't you know that ‘Erpi's’ service charges were apt to be larger than in the ‘States’?”

A. No.

Q. You had no idea of that whatever?

A. No.

Q. You are sure of that?

A. I am positive.”

Thereupon defendant's counsel moved to strike the last two answers on the ground they were incompetent, irrelevant and immaterial, which motion

(Testimony of W. D. Gross.)

was granted, to which ruling plaintiff then excepted. [269]

Thereupon Defendant Gross stated that he had written

PLAINTIFF'S EXHIBIT No. 31

for identification which reads as follows:

“Seattle, Washington.

August 1, 1928

Electrical Research Products, Inc.,  
1584 W. Washington St.,  
Los Angeles, Calif.

Gentlemen:

Yesterday I received a letter from Mr. Gage, advising me that at present you would be unable to accept my contracts for Western Electric Sound Projector equipment, for my Coliseum Theatres in Ketchikan and Juneau, Alaska. Today I talked further with Mr. Gage on this subject and it is at his suggestion that I am writing you.

I accepted this equipment with a thought for the future and fully realize the necessity of protecting myself at this time for the future when I expect your Engineering Department will be fully equipped to service equipment in Alaska, which, you gentlemen must realize, is only a short distance from Seattle. For instance, two boats weekly out of Seattle go to Ketchikan, Alaska. The total trip is forty hours and the maximum time from Ketchikan to Juneau is only fourteen hours. Furthermore, the

(Testimony of W. D. Gross.)

entertainment and amusement in Alaska is just as up-to-date as that in the States. Also, the theatres and equipment in the theatres are of the latest and most modern design that money can buy. My investment in the North is equivalent to any individual exhibitor operating a theatre of similar size in the States and I feel I must be protected.

When Mr. Gage sold me this equipment, it was with the distinct understanding that you would establish a service or inspection charge which would be in excess of the regular service charge, but would not be unreasonable. Mr. Gage was unable to give me anything definite but I felt that the reliability of the Company would certainly place the Territory of Alaska on an equal basis with anywhere in the United States, with me willing [270] to make the sacrifice. Therefore, I believe you should protect my April date on installations as I am sure that within a very few months you will have established a definite policy enabling you to take care of my situations along with all others.

After you have made the installations in my theatres, I would be willing to either hire one of your men for each town, permanently, or, if your engineers saw fit, leave my men in charge. We can always, in case of any difficulty, run silent pictures while waiting for a service man to come up from Seattle. I would pay the cost of the man coming and going. I would see to it that the standard of all reproduction of Vitaphone and Movietone subjects

(Testimony of W. D. Gross.)

would never be lowered for want of proper service.

I realize under the circumstances, after talking with Gage, that it is going to take you a little while to advise definitely on the installation. In the meantime, hold the earliest possible dates and cash my checks whenever you desire, notifying me at the earliest possible opportunity as I am anxious to close now for the proper service while I am in Seattle.

Yours very truly,

WDG/mm

(Signed) W. D. GROSS

D. W. Gross,

Atwood Hotel, for two weeks

Seattle, Wash.

after that

W. D. Gross,

Coliseum Theatre,

Juneau, Alaska.”

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Whereupon the following proceedings were had:

“Mr. ROBERTSON: I offer that letter in evidence, your Honor.

Mr. HELLENTHAL: Object to that Your Honor, because it is irrelevant, incompetent and immaterial. It was a letter written before the time of the execution of this contract which specifies it contains and embodies all the arrangements and agreements between the parties, and in any event, whatever transpired before that in relation to the subject matter of



(Testimony of W. D. Gross.)

the contract would have merged into the contract even though that express provision had not been in the contract, and the further reason this letter relates to an entirely different and separate contract which has nothing to do with the issues of the case which was entirely revoked when this contract of October 29th was executed.

Mr. ROBERTSON: It isn't offered to vary the terms of any contract. It is for the purpose of showing the circumstances which led up to it. It bears, we think, also, on his affirmative defense of duress and counter-claim of duress, and also his statement that he knew nothing about service charges, and it is proper to impeach the witness with it.

The COURT: The offer will be refused.

Mr. ROBERTSON: Exception, Your Honor.

The COURT: Exception allowed." [271]

Thereupon Defendant Gross further testified: In the late fall of 1928 I had no correspondence with plaintiff relative to the negotiation of the contracts, plaintiff's exhibits Nos. 1 and 3; the letter marked Plaintiff's exhibit No. 32 for identification, was written by my manager, Charles Tuckett, on the letterhead of the Alaska Film Exchange, which is one of the ways in which I did business and it had no bearing to the contracts, plaintiff's exhibits Nos. 1 and 3.

(Testimony of W. D. Gross.)

Thereupon plaintiff offered its

EXHIBIT No. 32

for identification in evidence, which letter reads:

“THE ALASKA FILM EXCHANGE

W. D. Gross, Manager

Largest Exchange North of Seattle

Office Coliseum Theatre Building

Juneau, Alaska.

Dec. 12, 1928.

Electrical Research Products Inc.,

Acoustic Dept.

250 West 57th St.,

New York, N. Y.

Att. Mr. E. S. Gregg, Export Mgr.

Dear Sir:

Your letter of Nov. 23 has just been handed to me. The delay on answering same is because for the last two months I have been in Seattle.

I have noticed your paragraphs numbered one, two and three. As these are just minor conditions and don't amount to very much I will accept them.

I would appreciate it very much if you will advise me, if the machines and engineer come at the same time or whether the engineer comes first and then you ship the machines.

If the machines and the engineer comes at the same time please advise me how much space you

(Testimony of W. D. Gross.)

require in the booth. And just how large the booth has to be as I might have to make some changes in one of my theatres. The booth in my Ketchikan house is about 10 x 20 ft. and just as modern as any house in the states. In Juneau I am afraid that we will have to remodel this booth. So with out fail advise me by return mail just what space you will require so that I will be able to remodel this booth before your engineer arrives.

Also regarding the service charge. I presume by running only one show per night and after your engineer has gone over the situation we will be able to work this out to the advantage of all concerned. He will also find that we have just as good electricians and operators here as they have anywhere [272] he has been. And that he will give me the privilege of using my own service man who is under salary at present.

So therefore kindly sign the contracts and also put my deposit checks thru the bank.

We are also building a new theatre in a town about eighty miles from Juneau, and remodeling another just forty miles from here. I would like to know if you could install your equipment in these theatres at the same time that your engineer is installing mine here in Juneau. If this is impossible how long would it be before I could get installations in either one or both of these towns? The new theatre will be finished about March 15, 1929.

(Testimony of W. D. Gross.)

Thanking you in advance for your co-operation in this and hoping to receive my copys of the contracts and advises I have requested I remain,

Very truly yours,

(Signed) W. D. Gross

WDG:c'

C.W.T.

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Whereupon the following proceedings were had:

“Mr. ROBERTSON: Offer it in evidence, if the Court please.

A. (Witness) That was prior to the contract.

Mr. HELLENTHAL: Let me ask the witness a question before this matter is passed on.

Q. (Mr. HELLENTHAL) Mr. Gross, did this letter in any way refer to the contracts made on March 28th, 1929?

A. No.

Mr. HELLENTHAL: Object as incompetent and irrelevant.

Mr. ROBERTSON: It is a matter for re-direct examination.

Mr. HELLENTHAL: No, it bears on the competency of this letter, if it were competent.

Mr. ROBERTSON: I will show it does.

Q. (Mr. HELLENTHAL) Does it?

A. No, it has no bearing on the contract.

Mr. ROBERTSON: I move to strike the latter part of the answer. (Answer read)

(Testimony of W. D. Gross.)

The COURT: That part of it is responsive.

Mr. HELLENTHAL: Object as irrelevant, incompetent and immaterial, and as relating to matters which are all merged into the written contract, especially in view of the provisions of the written contract that that contract embodies all the arguments, understandings and arrangements between the parties at the date of the signature—the 28th of March, 1929, [273] and the further reason that this letter relates to an entirely different and separate contract and has nothing to do with this contract at all.

The COURT: I don't think it is admissible at this time.

Mr. ROBERTSON: Exception."

Thereupon Defendant Gross further testified: I recognize this letter, plaintiff's exhibit No. 33 for identification but I don't know who wrote it, I don't know whether I replied to it or not.

Whereupon the following proceedings took place:

"Mr. ROBERTSON: I offer it in evidence, if the Court please.

Mr. HELLENTHAL: I want to ask a preliminary question.

Q. (Mr. HELLENTHAL) Mr. Gross, does this letter counsel just inquired about relate to the contracts signed on March 28th, 1929 or to some other contract?

A. It doesn't relate to March 29th.

(Testimony of W. D. Gross.)

Q. It does not?

A. No.

Mr. HELLENTHAL: Object as incompetent, irrelevant and immaterial, as not relating to any of the matters in issue—the contract of March 29th, but some other contract, and the further reason the only purpose it could serve would be to modify or introduce extraneous agreements prior to the execution of those contracts which would necessarily merge into the written contract, specifically so because of the express provision in the written contract that there are no agreements or understandings or other matters of that kind that are not embodied in the written contract.

Mr. ROBERTSON: Object to this re-direct examination of the defendant like that and also submit we are not bound by that.

Q. I would like to ask you Mr. Gross at this time whether or not the letter which has been marked plaintiff's exhibit '33' for identification isn't the letter to which you were replying when you wrote this letter plaintiff's exhibit '32' for identification?

A. I didn't write any of them letters.

Q. When Mr. Tuckett wrote the letter '32' for identification and signed your name to it, isn't that in reply to the letter exhibit '33' for identification?

A. I have no idea.

(Testimony of W. D. Gross.)

Q. I ask you to look on the back of '33' for identification and [274] see if the carbon copy isn't attached right there, from your own file?

A. It isn't marked who dictated the letter, and who signed the letter; generally have 'WDG' and the initials of the stenographer next to it.

Q. You don't deny that was written by Mr. Tuckett?

A. I have no idea—if the Tuckett initials is on there why——

Q. You stated before it was written by Mr. Tuckett.

Mr. FAULKNER: I think that is arguing with the witness, and don't think the witness stated that.

Mr. ROBERTSON: I surely have a right to ask if he stated it.

The COURT: Ask him.

Mr. ROBERTSON: I understood him to answer affirmatively.

A. I don't know who signed it.

Q. Now you say you don't know who signed it?

A. No, I don't know who signed it, unless Tuckett.

Q. You told your attorney that these two letters didn't refer to the contracts of March 28th, 1929?

A. Yes, sir.

(Testimony of W. D. Gross.)

Q. What contracts did they refer to, do you claim?

A. They didn't refer to any contract.

Mr. HELLENTHAL: Object as irrelevant, incompetent and immaterial.

The COURT: Overruled. [275]

Q. Mr. Gross, in December, 1928, what, if any, contracts were then in negotiation between you and 'Erpi' other than the contracts which have been introduced in evidence and marked plaintiff's exhibits '1' and '3'?

A. That is the only contract I know of.

Q. Those are the only contracts in negotiation at that time, isn't that true?

A. Yes.

Mr. HELLENTHAL: Did you understand that question?

Mr. ROBERTSON: I submit that he answered it and doesn't need any help of counsel.

Mr. HELLENTHAL: This man is not a very intelligent man. I want to know he understands the questions.

The COURT: I think he understands the questions.

(Last question and answer read)

Q. What is your answer, Mr. Gross?

A. To my recollection.

Q. That is your recollection?

A. There had been previous talk for other machines, higher priced machines.



(Testimony of W. D. Gross.)

Q. Previous to this time?

A. Yes.

Q. No contracts being negotiated for?

A. No sir.

Q. Now, Mr. Gross, you had signed some contracts a considerable time previous to this which had never been accepted, hadn't you?

Mr. HELLENTHAL: Object as incompetent, irrelevant and immaterial.

The COURT: Sustained.

Mr. ROBERTSON: I now offer these two letters in evidence at this time. He definitely stated at that time there were no contracts in negotiation except exhibits '1' and '3'.

Q. (Mr. HELLENTHAL): When was the first time you commenced negotiating with these parties in relation to the contracts which were finally signed March 28th, 1929?

Mr. ROBERTSON: I object at the present time, as out of order and not proper for counsel to propound questions to the witness at this time; he has that right on re-direct examination.

The COURT: I think it would tend to clear up the situation a little, both for the court and the jury. Answer the question. [276]

A. The first time I met Mr. Gage was in 1928.

Mr. HELLENTHAL: You don't understand the question.

(Testimony of W. D. Gross.)

Mr. ROBERTSON: I submit he already answered the question.

The COURT: Let's try and get somewhere.

Q. (Mr. HELLENTHAL): I am asking you about those contracts now in evidence, number 1 and number 3, the contracts signed on March 28th, 1929. Do you understand me now?

A. Yes.

Q. When did you first begin to negotiate for those contracts when was it you first heard of those contracts, the contracts you now have, I mean?

A. Sometime in March of 1929.

Q. Before that did you ever have any correspondence with these parties with reference to those contracts at all?

A. No sir.

Mr. ROBERTSON: Same objection, leading, and interjecting into my cross examination.

The COURT: I don't think it is leading.

Q. (Mr. HELLENTHAL): Did you have any correspondence with the Products Company about these contracts that are now in evidence, the ones you heard from first in February and March, 1929, before February or March, 1929?

A. No."

(Testimony of W. D. Gross.)

Thereupon plaintiff offered in evidence its

EXHIBIT No. 33

for identification, which reads:

“November 23, 1928.

Mr. W. D. Gross,  
Coliseum Theatre,  
Juneau, Alaska.

Dear Mr. Gross:

We are now prepared to agree to ship the equipments for your theatres in Juneau and Ketchikan in April of next year. In order to come to a mutual understanding I feel that you should be advised that certain expenses over and above those included in the domestic prices mentioned in the contracts that you have already signed will be billed to you separately.

1. The expenses of our engineer from the time he leaves Seattle, or other Pacific Coast port, until his return.

2. Any extra expenses over our standard rates which may be incurred due to unusual labor conditions or other causes. Extra expenses of this kind are not anticipated. [277]

3. A weekly service charge somewhat in excess of the one in the States. We will not be able to determine the exact amount of this charge until our engineer can study the local situation. Our desire is to give you service equal to that given to theatres in this country and at all times to keep this charge at a minimum.

(Testimony of W. D. Gross.)

If you will let us know that you agree to the terms of this letter, we will sign and return copies of the contracts to you and will deposit the checks.

If other business develops while our engineer is in Alaska, his expenses will be pro-rated between your two theatres and any others on which he might be used. The expenses of maintaining service would also be pro-rated among all theatres in which we are to make installations.

Yours very truly,

E. W. Gregg

ESG:S

Export Manager.”

Whereupon the following proceedings were had:

“Mr. HELLENTHAL: I make objection to the offer: First: It is of another contract than the basis of the action. Second: It could serve no possible purpose except to introduce into the case a new and special agreement or understanding, and any such agreement or understanding which might have been had, even although of this contract, would be incompetent, irrelevant and immaterial because it would have merged into the written contract, especially in this contract because this contract contains the express provision there are no understandings between the parties except those contained in the contract of March 28th, 1929.

The COURT: It is not admissible at this time. The Court will so rule.

(Testimony of W. D. Gross.)

Mr. ROBERTSON: Exception, if the court please to the refusal of plaintiff's exhibits '31', '32', and '33' for identification."

Prior to their respective offer defendant Gross testified that he wrote the letter, plaintiff's Exhibit 31 for identification, that the Alaska Film Exchange was one of the ways that he did business; that he didn't sign the letter, plaintiff's exhibit 32 for identification; that it was written by Charles Tuckett and Tuckett signed it himself; that he didn't give Tuckett authority to write letters in his business; that it was written prior to the contract; that it didn't refer to or have any bearing on the contract of March 28, 1929, that he recognized the letter, plaintiff's Exhibit [278] 33 for identification; that he didn't know who wrote it; that he didn't know whether or not he replied to the letter of November 23, 1928; that he had no idea whether Tuckett wrote the letter, plaintiff's Exhibit 32 for identification in reply to the letter, Plaintiff's Exhibit 33 for identification; that he didn't know who signed it unless Tuckett did; that neither of those letters referred to the contracts of March 28, 1929, or any contract. [279]

Whereupon the following proceedings were had:

"Mr. ROBERTSON: I would like to ask at this time if counsel have the books we mentioned this morning?

Mr. HELLENTHAL: The books?

Mr. ROBERTSON: Yes.

(Testimony of W. D. Gross.)

Mr. HELLENTHAL: No. We have those books, and will exhibit them to counsel, but we are not going to bring them up here. We will offer them in evidence when the proper time comes, but I don't think counsel can get head or tail of them until the bookkeeper explains them.

Mr. ROBERTSON: We made demand for the production of the books before the trial started, and are entitled to see the books and not wait until the last moment.

Mr. HELLENTHAL: We will give them to you for inspection any time you want.

Mr. ROBERTSON: What time will it be convenient?

Mr. HELLENTHAL: Whenever it suits your convenience, but I suggest you wait until the bookkeeper explains them, so you will know something about them.

Mr. ROBERTSON: We may have just as good bookkeepers as Mr. Gross.

Mr. HELLENTHAL: I have doubts you have a bookkeeper that knows as much about these books as the man that kept them; that is the point I am trying to get at.

Mr. ROBERTSON: That gives us no opportunity to challenge Mr. Gross on his own books.

Mr. HELLENTHAL: Mr. Gross knows nothing about them.

The COURT: That is true. I suppose under the circumstances you can reserve that part

(Testimony of W. D. Gross.)

of the cross-examination until you get possession of the books.

Mr. HELLENTHAL: I will explain to counsel we have made a summary from the books and all the items he is inquiring about, profit and loss, including Shearer, which will be produced in evidence at the proper time and counsel will be given an opportunity to examine the books and check them up.

Mr. ROBERTSON: Of course we want to see the books ourselves and check the summary as shown by the books." [280]

Thereupon Witness Gross further testified: From the time the new Western Electric equipment was put in the Juneau Coliseum Theatre under defendant's arrangement with Shearer, I always made money.

Thereupon defendant produced profit and loss statements under his arrangement with B. F. Shearer, which were then offered in evidence by plaintiff and received and marked as

PLAINTIFF'S EXHIBITS, Series 34-A to 34-Y,  
both inclusive, and 35-A to 35-Y,

which respective exhibits contain the following statement of receipts, expenses, profits and losses, viz:

(Testimony of W. D. Gross.)

## JUNEAU EMPIRE THEATRES, INC.

Operating Statement—1933.

<u>Month</u>	<u>Receipts or Total Expenses</u>	<u>Profits</u>	<u>Losses</u>	<u>Total Profits</u>
CAPITOL, Juneau. (Exhibit 35-Y)				
May				
Receipts .....	\$2,834.30			
Total expenses .....	2,447.72	\$ 386.58		
COLISEUM, Juneau. (Exhibit 35-Y)				
May				
Receipts .....	\$1,131.40			
Total expenses .....	1,181.96		\$ 50.56	
May—Total Profit from Juneau Operations.....				\$ 336.02
CAPITOL, Juneau. (Exhibit 35-Y)				
June				
Receipts .....	\$3,758.35			
Total expenses .....	3,123.14	\$ 635.21		
COLISEUM, Juneau. (Exhibit 35-Y)				
June				
Receipts .....	\$ 451.05			
Total expenses .....	615.69		\$ 164.64	
June—Total Profit from Juneau Operations.....				\$ 470.57
CAPITOL, Juneau. (Exhibit 35-Y)				
July				
Receipts .....	\$3,686.64			
Total expenses .....	3,417.53	\$ 269.11		
COLISEUM, Juneau. (Exhibit 35-Y)				
July				
Receipts .....	\$1,580.25			
Total expenses .....	1,527.51	\$ 52.74		
July—Total Profit from Juneau Operations.....				\$ 321.85



(Testimony of *W. D. Gross.*)

<u>Month</u>	<u>Receipts or Total Expenses</u>	<u>Profits</u>	<u>Losses</u>	<u>Total Profits</u>
CAPITOL, Juneau. (Exhibit 35-X)				
Aug.				
Receipts .....	\$4,250.88			
Slide Rental .....	62.50			
	<hr/>			
	\$4,313.38			
Total expenses .....	2,713.54	\$1,599.84		
	<hr/>			

## COLISEUM, Juneau. (Exhibit 34-X)

Aug.				
Receipts .....	\$1,472.85			
Slide Rental .....	37.50			
	<hr/>			
	\$1,510.35			
Total expenses .....	1,859.77	\$ 349.42		
	<hr/>			
Total Profit from August Operations.....				\$1,250.42

## CAPITOL, Juneau. (Exhibit 35-U)

Sept.				
Receipts .....	\$4,176.59			
Total expenses .....	2,849.47	\$1,327.12		
	<hr/>			

## COLISEUM, Juneau. (Exhibit 34-U)

Sept.				
Receipts .....	\$1,793.80			
Total expenses .....	2,118.53	\$ 324.73		
	<hr/>			
Total Profit from September Operations.....				\$1,002.39

(Testimony of W. D. Gross.)

<b>Month</b>	<b>Receipts or Total Expenses</b>	<b>Profits</b>	<b>Losses</b>	<b>Total Profits</b>
CAPITOL, Juneau. (Exhibit 35-T)				
Oct.				
	Receipts .....	\$4,885.17		
	Total expenses .....	2,981.53	\$1,903.64	
		<hr/>		
COLISEUM, Juneau. (Exhibit 34-T)				
Oct.				
	Receipts .....	\$1,605.45		
	Total expenses .....	2,154.94	\$ 549.49	
		<hr/>		
	Total Profit from October Operations.....			\$1,354.15
CAPITOL, Juneau. (Exhibit 35-R)				
Nov.				
	Receipts .....	\$4,620.88		
	Total expenses .....	2,906.53	\$1,714.35	
		<hr/>		
COLISEUM, Juneau. (Exhibit 34-R)				
Nov.				
	Receipts .....	\$1,899.15		
	Total expenses .....	2,106.21	\$ 207.06	
	Total Profit from November Operations.....			\$1,507.29

## (Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
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## CAPITOL, Juneau. (Exhibit 35-O)

Dec.

Receipts .....	\$3,830.79			
Slide Rentals .....	60.00			
	<hr/>			
	\$3,890.79			
Total expenses .....	3,294.93	\$ 595.86		

## COLISEUM, Juneau. (Exhibit 34-O)

Dec.

Receipts .....	\$1,297.10			
Slide Rental .....	65.00			
Theatre Rental .....	100.00			
	<hr/>			
	\$1,462.10			
Total expenses .....	2,021.84	\$ 559.74		
	<hr/>			
Total Profit from December Operations.....		\$ 36.12		

## JUNEAU EMPIRE THEATRES, INC.

## Operating Statement, 1934

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
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## CAPITOL, Juneau. (Exhibit 35-N)

Jan.

Receipts .....	\$4,337.59			
Total expenses .....	2,938.70	\$1,398.89		
	<hr/>			

## COLISEUM, Juneau. (Exhibit 34-N)

Jan.

Receipts .....	\$1,727.05			
Total expenses .....	1,905.10	\$ 178.05		
	<hr/>			
Total Profit from January Operations.....		\$1,220.84		

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
CAPITOL, Juneau. (Exhibit 35-N)				
Feb.				
Receipts .....	\$4,485.14			
Total expenses .....	2,832.31	\$1,652.83		
COLISEUM, Juneau. (Exhibit 34-N)				
Feb.				
Receipts .....	\$1,732.80			
Total expenses .....	1,864.85		\$ 132.05	
Total Profit from February Operations.....				\$1,520.78
CAPITOL, Juneau. (Exhibit 35-N)				
Mar.				
Receipts .....	\$4,415.88			
Total expenses .....	3,065.15	\$1,350.73		
COLISEUM, Juneau. (Exhibit 34-N)				
Mar.				
Receipts .....	\$1,994.60			
Slide Rental .....	70.00			
	\$2,064.60			
Total expenses .....	2,384.09		\$ 319.49	
Total Profit from March Operations.....				\$1,031.24

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
CAPITOL, Juneau. (Exhibit 35-N)				
April				
	Receipts .....	\$4,508.40		
	Slide Rental .....	25.00		
		<u>4,533.40</u>		
	Total expenses .....	3,175.06	\$1,358.34	
COLISEUM, Juneau. (Exhibit 34-N)				
April				
	Receipts .....	\$2,287.20		
	Total expenses .....	2,543.21	\$ 256.01	
		<u>2,543.21</u>		
	Total Profit from April Operations.....			\$1,102.33
CAPITOL, Juneau. (Exhibit 35-I)				
May				
	Receipts .....	\$3,947.59		
	Total expenses .....	2,890.98	\$1,056.61	
		<u>2,890.98</u>		
COLISEUM, Juneau. (Exhibit 34-I)				
May				
	Receipts .....	\$2,229.30		
	Total expenses .....	2,451.45	\$ 222.15	
		<u>2,451.45</u>		
	Total Profit from May Operations.....			\$ 834.46
CAPITOL, Juneau. (Exhibit 35-I)				
June				
	Receipts .....	\$4,199.98		
	Total expenses .....	2,792.65	\$1,407.33	
		<u>2,792.65</u>		
COLISEUM, Juneau. (Exhibit 34-I)				
June				
	Receipts .....	\$2,120.90		
	Total expenses .....	2,858.28	\$ 737.38	
		<u>2,858.28</u>		
	Total Profit from June Operations.....			\$ 669.95

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
CAPITOL, Juneau. (Exhibit 35-I)				
July				
	Receipts .....	\$4,821.92		
	Total expenses .....	3,177.43	\$1,644.49	
COLISEUM, Juneau. (Exhibit 34-I)				
July				
	Receipts .....	\$2,224.65		
	Total expenses .....	2,701.31	\$ 476.66	
	Total Profit from July Operations.....			\$1,167.83
				[284]
CAPITOL, Juneau. (Exhibit 35-D)				
Aug.				
	Receipts .....	\$5,134.85		
	Total expenses .....	3,369.00	\$1,765.85	
COLISEUM, Juneau. (Exhibit 34-C)				
Aug.				
	Receipts .....	\$2,404.60		
	Slide Rental .....	140.00		
		\$2,544.60		
	Total expenses .....	2,614.41	\$ 69.81	
	Total Profit from August Operations.....			\$1,696.04
CAPITOL, Juneau. (Exhibit 35-D)				
Sept.				
	Receipts .....	\$4,908.21		
	Total expenses .....	3,336.21	\$1,572.00	
COLISEUM, Juneau. (Exhibit 34-C)				
Sept.				
	Receipts .....	\$2,919.15		
	Total expenses .....	2,745.63	173.52	
	Total Profit from September Operations.....			\$1,745.52

## (Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
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## CAPITOL, Juneau. (Exhibit 35-D)

Oct.

Receipts .....	\$4,584.17			
Total expenses .....	3,224.83	\$1,359.34		

## COLISEUM, Juneau. (Exhibit 34-C)

Oct.

Receipts .....	\$2,104.35			
Total expenses .....	2,604.13		\$ 499.78	

Total Profit from October Operations.....				\$ 859.56
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## CAPITOL, Juneau. (Exhibit 35-B)

Nov.

Receipts .....	\$4,208.10			
Slide Rental .....	1.36			
	<u>\$4,209.46</u>			
Total expenses .....	3,006.88	\$1,202.58		

## COLISEUM, Juneau. (Exhibit 34-A)

Nov.

Receipts .....	\$2,317.95			
Total expenses .....	2,668.45		\$ 350.50	

Total Profit from November Operations.....				\$ 852.08
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(Testimony of W. D. Gross.)

## ALASKA EMPIRE THEATRES, INC.

Operating Statement, 1933.

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
REVILLA, Ketchikan. (Exhibit 34-Y)				
May				
	Receipts .....	\$1,926.10		
	Total expenses .....	1,504.07	\$ 422.03	
COLISEUM, Ketchikan. (Exhibit 34-Y)				
May				
	Receipts .....	\$ 85.60		
	Total expenses .....	289.28	\$ 203.68	
LIBERTY, Ketchikan. (Exhibit 34-Y)				
May				
	Receipts .....	\$ —		
	Total expenses .....	108.53	\$ 108.53	
	Total Profit from May Operations.....			\$ 109.82
REVILLA, Ketchikan. (Exhibit 34-Y)				
June				
	Receipts .....	\$2,526.32		
	Slide Rental .....	13.75		
		\$2,540.07		
	Total expenses .....	1,842.65	\$ 697.42	
COLISEUM, Ketchikan. (Exhibit 34-Y)				
June				
	Receipts .....	\$ 2.50		
	Total expenses .....	346.29	\$ 343.79	
LIBERTY, Ketchikan. (Exhibit 34-Y)				
June				
	Receipts .....	\$ —		
	Total expenses .....	105.85	\$ 105.85	
	Total Profit from June Operations.....			\$ 247.78



(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
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REVILLA, Ketchikan. (Exhibit 34-Y)

July

Receipts .....	\$2,630.44			
Slide Rental .....	15.00			
	<u>          </u>			
	\$2,645.44			
Total expenses .....	2,009.36	\$ 636.08		
	<u>          </u>			

COLISEUM, Ketchikan. (Exhibit 34-Y)

July

Receipts .....	\$1,142.78			
Total expenses .....	964.84	\$ 177.94		
	<u>          </u>			

LIBERTY, Ketchikan. (Exhibit 34-Y)

July

Receipts .....	\$ —			
Total expenses .....	101.37	\$ 101.37		
	<u>          </u>			

Total Profit from July Operations.....\$ 712.65

Total Profit from May, June and July Operations.....\$1,070.25

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
REVILLA, Ketchikan. (Exhibit 35-W)				
Aug.				
	Receipts .....	\$2,623.30		
	Slide Rental .....	23.75		
		<u>\$2,647.05</u>		
	Total expenses .....	1,757.60	\$ 889.45	
COLISEUM, Ketchikan. (Exhibit 34-W)				
Aug.				
	Receipts .....	\$ 988.23		
	Rental on Bldg.....	85.00		
		<u>\$1,073.23</u>		
	Total expenses .....	1,134.15	\$ 60.92	
LIBERTY, Ketchikan. (Exhibit 34-W)				
Aug.				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
		<u>100.00</u>		
	Total Profit from August Operations.....			\$ 728.53
REVILLA, Ketchikan. (Exhibit 35-V)				
Sept.				
	Receipts .....	\$2,326.44		
	Total expenses .....	1,578.69	\$ 747.75	
		<u>1,578.69</u>		
COLISEUM, Ketchikan. (Exhibit 34-V)				
Sept.				
	Receipts .....	\$2,397.82		
	Total expenses .....	1,541.33	\$ 856.49	
		<u>1,541.33</u>		
LIBERTY, Ketchikan. (Exhibit 34-V)				
Sept.				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
		<u>100.00</u>		
	Total Profit from September Operations.....			\$1,504.24

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
REVILLA, Ketchikan. (Exhibit 35-S)				
Oct.				
	Receipts .....	\$1,435.29		
	Slide Rental .....	25.00		
		<hr/>		
		\$1,460.29		
	Total expenses .....	1,739.03	\$ 278.74	

COLISEUM, Ketchikan. (Exhibit 34-S)

Oct.				
	Receipts .....	\$2,369.90		
	Slide Rental .....	2.00		
		<hr/>		
		\$2,371.90		
	Total expenses .....	2,129.78	\$ 242.12	

LIBERTY, Ketchikan. (Exhibit 34-S)

Oct.				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
		<hr/>		
	Total Loss from October Operations.....			\$ 136.62

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
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REVILLA, Ketchikan. (Exhibit 35-Q)

Nov.

Receipts .....	\$1,431.08			
Slide Rental .....	24.00			
	<u>          </u>			
	\$1,455.08			
Total expenses .....	1,443.31	\$ 11.77		
	<u>          </u>			

COLISEUM, Ketchikan. (Exhibit 34-Q)

Nov.

Receipts .....	\$1,858.30			
Slide rentals .....	5.00			
	<u>          </u>			
	\$1,863.30			
Total expenses .....	1,547.61	\$ 315.69		
	<u>          </u>			

LIBERTY, Ketchikan. (Exhibit 34-Q)

Nov.

Receipts .....	\$ —			
Total expenses .....	100.00		\$ 100.00	
	<u>          </u>			
Total Profit from November Operations.....				\$ 227.46

REVILLA, Ketchikan. (Exhibit 35-P)

Dec.

Receipts .....	\$1,870.61			
Slide Rentals .....	14.60			
	<u>          </u>			
	\$1,884.61			
Total expenses .....	1,864.32	\$ 20.29		
	<u>          </u>			

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
<hr/>				
COLISEUM, Ketchikan. (Exhibit 34-P)				
Dec.				
	Receipts .....	\$ 666.71		
	Total expenses .....	1,081.63	\$ 414.92	
<hr/>				
LIBERTY, Ketchikan. (Exhibit 34-P)				
Dec.				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
<hr/>				
	Total Loss from December Operations.....			\$ 494.63
				[288]

REVILLA, Ketchikan. (Exhibit 35-M)				
Jan.				
	Receipts .....	\$2,156.90		
	Slide Rental .....	57.50		
<hr/>				
		\$2,214.40		
	Total expenses .....	1,941.15	\$ 273.25	
<hr/>				

COLISEUM, Ketchikan. (Exhibit 34-M)				
Jan.				
	Receipts .....	\$ 876.30		
	Total expenses .....	984.48	\$ 108.18	
<hr/>				

LIBERTY, Ketchikan. (Exhibit 34-M)				
Jan.				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
<hr/>				
	Total Profit from January Operations.....			\$ 65.07

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
REVILLA, Ketchikan. (Exhibit 35-M)				
Feb.				
	Receipts .....	\$2,163.38		
	Slide Rental .....	25.00		
		<hr/>		
		\$2,188.38		
	Total expenses .....	1,686.65	\$ 501.73	
		<hr/>		
COLISEUM, Ketchikan. (Exhibit 34-M)				
Feb.				
	Receipts .....	\$1,258.61		
	Total expenses .....	1,144.24	\$ 114.37	
		<hr/>		
LIBERTY, Ketchikan. (Exhibit 34-M)				
Feb.				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
		<hr/>		
	Total Profit from February Operations.....			\$ 516.10
REVILLA, Ketchikan. (Exhibit 35-M)				
Mar.				
	Receipts .....	\$1,611.05		
	Slide Rental .....	20.00		
		<hr/>		
		\$1,631.05		
	Total expenses .....	1,708.36	\$ 77.31	
		<hr/>		
COLISEUM, Ketchikan. (Exhibit 34-M)				
Mar.				
	Receipts .....	\$2,811.61		
	Total expenses .....	2,032.64	\$ 778.97	
		<hr/>		
LIBERTY, Ketchikan. (Exhibit 34-M)				
Mar.				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
		<hr/>		
	Total Profit from March Operations.....			\$ 601.66

## (Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
REVILLA, Ketchikan. (Exhibit 35-M)				
April				
	Receipts .....	\$1,514.58		
	Slide Rental .....	31.00		
		<u>1,545.58</u>		
	Total expenses .....	1,842.19	\$ 296.61	
COLISEUM, Ketchikan. (Exhibit 34-M)				
April				
	Receipts .....	\$2,321.30		
	Slide Rental .....	6.50		
		<u>2,327.80</u>		
	Total expenses .....	1,856.89	\$ 470.91	
LIBERTY, Ketchikan. (Exhibit 34-M)				
April				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
		<u>100.00</u>		
	Total Profit from April Operations.....			\$ 74.30
REVILLA, Ketchikan. (Exhibit 35-J)				
May				
	Receipts .....	\$1,633.19		
	Slide Rental .....	30.00		
		<u>1,663.19</u>		
	Total expenses .....	1,760.48	\$ 97.29	
COLISEUM, Ketchikan. (Exhibit 34-J)				
May				
	Receipts .....	\$2,696.05		
	Total expenses .....	1,857.91	\$ 838.14	
		<u>1,857.91</u>		
LIBERTY, Ketchikan. (Exhibit 34-J)				
May				
	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
		<u>100.00</u>		
	Total Profit from May Operations.....			\$ 640.85

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
REVILLA, Ketchikan. (Exhibit 35-J)				
June				
	Receipts .....	\$1,659.51		
	Slide Rental .....	20.00		
		<u>1,679.51</u>		
	Total expenses .....	1,728.57	\$ 49.06	

COLISEUM, Ketchikan. (Exhibit 34-J)

June

	Receipts .....	\$2,491.02		
	Slide Rental .....	2.00		
		<u>2,493.02</u>		
	Total expenses .....	2,112.82	\$ 380.20	

LIBERTY, Ketchikan. (Exhibit 34-J)

June

	Receipts .....	\$ —		
	Total expenses .....	100.00	\$ 100.00	
		<u>100.00</u>		
	Total Profit from June Operations.....			\$ 231.14

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REVILLA, Ketchikan. (Exhibit 35-J)

July

	Receipts .....	\$2,068.78		
	Slide Rental .....	25.00		
		<u>2,093.78</u>		
	Total expenses .....	1,948.92	\$ 144.86	



(Testimony of *W. D. Gross.*)

<u>Month</u>	<u>Receipts or Total Expenses</u>	<u>Profits</u>	<u>Losses</u>	<u>Total Profits</u>
COLISEUM, Ketchikan. (Exhibit 34-J)				
July				
Receipts .....	\$3,353.64			
Total expenses .....	2,312.00	\$1,041.64		
LIBERTY, Ketchikan. (Exhibit 34-J)				
July				
Receipts .....	\$ —			
Total expenses .....	100.00		\$ 100.00	
Total Profit from July Operations.....				\$1,086.50
REVILLA, Ketchikan. (Exhibit 35-C)				
Aug.				
Receipts .....	\$2,003.24			
Slide Rental .....	52.50			
				\$2,055.74
Total expenses .....	1,998.77	\$ 56.97		
COLISEUM, Ketchikan. (Exhibit 34-D)				
Aug.				
Receipts .....	\$3,256.87			
Total expenses .....	2,034.11	\$1,222.76		
LIBERTY, Ketchikan. (Exhibit 34-D)				
Aug.				
Receipts .....	\$ —			
Total expenses .....	20.70		\$ 20.70	
Total Profit from August Operations.....				\$1,259.03

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
REVILLA, Ketchikan. (Exhibit 35-C)				
Sept.				
	Receipts .....	\$2,790.20		
	Slide Rental .....	97.60		
		<hr/>		
		\$2,887.80		
	Total expenses .....	1,941.88	\$ 945.92	
		<hr/>		
COLISEUM, Ketchikan. (Exhibit 34-D)				
Sept.				
	Receipts .....	\$3,941.55		
	Slide Rental .....	150.00		
		<hr/>		
		\$4,091.55		
	Total expenses .....	2,293.59	\$1,797.96	
		<hr/>		
LIBERTY, Ketchikan. (Exhibit 34-D)				
Sept.				
	Receipts .....	\$ —		
	Total expenses .....	—		
		<hr/>		
	Total Profit from September Operations.....			\$2,743.88

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REVILLA, Ketchikan. (Exhibit 35-C)				
Oct.				
	Receipts .....	\$2,048.92		
	Slide Rental .....	73.70		
		<hr/>		
		\$2,122.42		
	Total expenses .....	1,995.21	\$ 127.21	
		<hr/>		
COLISEUM, Ketchikan. (Exhibit 34-D)				
Oct.				
	Receipts .....	\$3,812.24		
	Total expenses .....	2,190.48	\$1,621.76	
		<hr/>		

(Testimony of W. D. Gross.)

Month	Receipts or Total Expenses	Profits	Losses	Total Profits
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LIBERTY, Ketchikan. (Exhibit 34-D)

Oct.

Receipts .....\$ ——

Total expenses ..... ——

Total Profit from October Operations.....\$1,748.97

REVILLA, Ketchikan. (Exhibit 35-A)

Nov.

Receipts .....\$1,891.60

Other income ..... 72.50

—————  
\$1,964.10

Total expenses ..... 1,884.54 \$ 79.56

COLISEUM, Ketchikan. (Exhibit 34-B)

Nov.

Receipts .....\$3,481.15

Other income ..... 200.00

—————  
\$3,681.15

Total expenses ..... 2,125.83 \$1,555.32

Total Profit from November Operations.....\$1,634.88

(Testimony of W. D. Gross.)

The foregoing statements of receipts, expenses, profits and losses are repeated in the remainder of the plaintiff's exhibits Series 34 and 35 for the following respective times, viz:

Exhibit 35-E, Capitol, Juneau, July, August and Sept. 1934

Exhibit 34-E, Coliseum, Juneau, July, August and September, 1934

Exhibit 34-F, Coliseum, Ketchikan, July, August and Sept. 1934

Exhibit 35-F, Revilla and Liberty, Ketchikan, July, August and Sept. 1934

Exhibit 35-G, Revilla, Ketchikan, June, July, August 1934

Exhibit 34-G, Coliseum, and Liberty, Ketchikan, June, July, and August, 1934

Exhibit 34-H, Coliseum, Juneau, June, July, and August, 1934

Exhibit 35-H, Capitol, Juneau, June, July, and August, 1934

Exhibit 34-K, Coliseum, and Liberty, Ketchikan, March, April, and May, 1934

Exhibit 35-K, Revilla, Ketchikan, March, April, and May, 1934

Exhibit 35-L, Capitol, Juneau, March, April, and May, 1934

Exhibit 34-L, Coliseum, Juneau, March, April, and May, 1934

therefore, as it would simply be repetition, plaintiff's exhibits 34-E, 34-F, 34-G, 34-H, 34-K, 34-L,

(Testimony of W. D. Gross.)

35-E, 35-F, 35-G, 35-H, 35-K, and 35-L, are not copied herein. [292]

Thereupon Defendant Gross further testified: Of the profits or losses made under my arrangement with Shearer I received as my share 40% of those made in Juneau, and 33-1/3% of those made in Ketchikan.

Whereupon the following proceedings were had:

“Q. Mr. Gross, yesterday in reply to Mr. Hellenthal’s question ‘When were those first contracts’ When did you first begin to negotiate for those contracts—when was it you first heard of those contracts,—the contracts you now have, I mean, you said, ‘Sometime in March, 1929’—is that correct?

A. Yes sir.

Q. Now, Mr. Gross, as a matter of fact the payments upon these two equipments were made—the first payments—were made long before that, were they not?

A. Not what I remember.

Q. Now, Mr. Gross, I hand you these two checks, from your defendant’s exhibit ‘F-8’ and ask you to look at them and note the date please.

A. Yes.

Q. Now, those two checks were your first payments, as a matter of fact upon plaintiff’s contracts ‘1’ and ‘3’, is that not true?

A. No.

(Testimony of W. D. Gross.)

Q. Do you mean to say that those checks weren't applied to payments upon the contracts '1' and '3'?

A. Was after applied to it, but the contract was cancelled, absolutely until they sent in the original contract.

Q. But those checks which you drew on that date,—what is the date of the check?

A. July 28th, '28.

Q. Were the checks which were used as original payments on the contracts '1' and '3', is that not true?

A. No.

Q. Do you understand the question?

A. I do.

Q. Weren't those checks applied upon the payments on your contracts '1' and '3'?

A. Not on the March contract.

Q. You testified yesterday that these checks were the checks you made payment on these contracts?

A. These checks were left in their possession as a deposit, any time they got ready they would send the equipment. [293]

Q. These were used as a down payment on your contracts '1' and '3'?

A. Yes, that is correct.

Q. Those were the checks dated Juneau, Alaska, July 28th, 1928, one drawn on the B. M. Behrends Bank in favor of Electrical Re-

(Testimony of W. D. Gross.)

search Products, Incorporated, for \$1130.00 signed, 'Coliseum Theatre, Juneau, W. D. Gross, Manager,' and the other dated, Ketchikan, Alaska, July 28th, 1928, drawn on the Miners & Merchants Bank, Ketchikan, Ketchikan, Alaska, to the order of the Electrical Research Products Company, Incorporated, for \$1130.00 signed, 'Coliseum Theatre, Juneau, by W. D. Gross, Manager'; those are the two checks you are now referring to?

A. Yes sir."

Thereupon defendant Gross further testified: The letter dated February 7, 1929, to me from plaintiff by Gregg, is the original letter with which plaintiff returned to me those two original contracts, plaintiff's Nos. 1 and 3.

Thereupon plaintiff's letter dated February 7, 1929, to defendant, was received in evidence, the Court stating that it might be received as going only to prove defendant's credibility, and marked

PLAINTIFF'S EXHIBIT No. 36,

which reads:

February 7th, 1929.

Mr. W. D. Gross,  
The Alaska Film Exchange,  
Coliseum Theatre Bldg.,  
Juneau, Alaska.

Dear Mr. Gross:

I have your letter of January 22nd, which requests the cancellation of Non-Synchronous and

(Testimony of W. D. Gross.)

Microphone Attachments on your orders for the Ketchikan and Juneau, Alaska Theatres. In accordance with this request, I have had re-drawn the enclosed contracts for those two theatres, indicating a charge of \$10,500 each instead of the previous charge of \$11,300. The demand and monthly notes payable on these contracts have been changed accordingly and are also enclosed.

The down payments of \$1,130 on each contract previously made are being applied on the revised contracts. The latter require a down payment of \$1,050; the difference of \$80.00 is credited in the demand notes (usually 15% of the contract), but in this case reduced from \$1,575 to \$1,495 each. In each case the twelve monthly payment notes are now \$656.25, covering a balance of \$7,875 on each agreement.

Please find enclosed also the contract for the Coliseum Theatre at Petersburg. Please note that this contract excludes the Non-Synchronous and Microphone Attachments. We have not entered the owner's name at the top of the agreement, leaving this blank until you have indicated by the signature whether you or Mr. Enge individually, or both of you as a partnership, are to be the signatories.

Kindly sign all three copies of these three [294] contracts and all the notes attached to each, returning them promptly for final signing along with your checks for the amount of \$1,050 or 10%, payable on the Coliseum, Petersburg, contract. [295]



(Testimony of W. D. Gross.)

If Mr. Enge is to sign the contract for the Petersburg Theatre, please have him fill in the attached credit application form and return it to us for our records.

With the execution of these contracts, we shall return as cancelled the original contracts and notes signed by you on your theatres at Ketchikan and Juneau.

Your letter of January 22nd, requested contracts on the 3S Equipment for the theatres up to eight hundred seats. I am enclosing two contracts made up with blanks for the entry of the name and location of the theatres, on this type of equipment, for your signature, together with the appropriate notes, but at this time, I am unable to promise you an installation of this type until after July 1st, since the equipments will not be available from the factory before about June 1st.

Very truly yours,

HBA:AS  
encl.

(Signed) E. S. GREGG.

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Thereupon Defendant Gross further testified: I received plaintiff's letter, dated February 14, 1929

Whereupon plaintiff's letter to defendant dated February 14, 1929, was received in evidence, the Court stating that it might be admitted only as going to prove the credibility of the witness, and marked

(Testimony of W. D. Gross.)

PLAINTIFF'S EXHIBIT No. 36-A,

which letter reads:

February 14th, 1929.

Mr. W. D. Gross

The Alaska Film Exchange,  
Coliseum Theatre Bldg.,  
Juneau, Alaska.

Dear Mr. Gross:

Answering yours of February 4th which refers to my letter of January 22nd, I have already mailed, under date of February 7th, revised contracts for Ketchikan and Juneau, excluding the Non-Synchronous and Microphone Attachments, as well as three contracts for signatures, one on a 2S-41 Equipment for Petersburg and two contracts in blank for the 3S Equipment which will not be available for installation until after July 1st.

If it is your intention to use a 3S Equipment in the Petersburg theatre rather than the 2S-41 for which we have sent you a contract, you may return unsigned the 2S-41 contract and use one of the two 3S contracts.

Regarding the shipping schedule for the Ketchikan equipment, the late availability of this equipment from the factory makes it impossible to catch the April 6th boat from Seattle; consequently, as I said in my letter of January 22nd, we shall attempt to make the April 13th boat, but even that date will require very quick scheduling between its release from the warehouse on or about April 1st and the sailing date April 13th. Under the circumstances,

(Testimony of W. D. Gross.)

this is the best we can do, but it is after all only one week later, and perhaps the installation engineer may be able to make up part of that loss in getting the equipment installed promptly. [296]

I shall pass on word to the installation engineer that you will be in Seattle either at the Atwood Hotel or on the film row sometime around the shipping date.

Very truly yours,

HBS:AS

E. S. Gregg.

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Thereupon Defendant Gross further testified: I signed the letter dated January 22, 1929, to plaintiff.

Thereupon defendant's letter to plaintiff dated January 22, 1929, was received in evidence, the Court stating that it might be received for the purpose only of testing the witness' credibility, and marked

PLAINTIFF'S EXHIBIT No. 36-B,

and reads:

Jan. 22, 1929

Electrical Research Products

New York, N Y

Att: Mr. Gregg.

Dear Sir:

Owing to the fact that all the picture companys are now making all talking, part talking and sound pictures.

(Testimony of W. D. Gross.)

I would appreciate it very much if you would be so kind as to cancel the following attachments from my installations.

The Non-synchronous attachment

The Megaphone attachment

It will be impossible for me to use either one of these attachments on the two machines that you are going to install for me in my Ketchikan, and Juneau, Theatres.

Just ship the Vitaphone and Movietone equipment and leave the non synchronous and megaphone attachments out.

The extra money that I paid on the first payment you can credit this to me and when your representative comes he can deduct same from the second or third note that becomes due. Or whichever way it will be the most convenient for you to handle.

Also would it be possible, while your men are here to install your new \$7000.00 installation in a couple of my towns.

You had better forward a couple or three contracts on these new installations as I have some prospects for the Vitaphone and Movitone equipment under this new price.

Hoping that it will not inconvenient you to any great extent and that I will hear from you by return mail on this matter I remain

Very truly yours,

S.D.G.c.

(Signed) W. D. GROSS. [297]

(Testimony of W. D. Gross.)

Thereupon defendant Gross further testified: My signature is at the bottom of the letter dated February 4, 1929, addressed to plaintiff.

Thereupon defendant's letter to plaintiff dated February 4, 1929, was marked

PLAINTIFF'S EXHIBIT No. 36-C

for identification, and was offered in evidence by plaintiff, which letter reads:

Feb. 4, 1929

Electrical Research Products Inc.,

New York, N. Y.

Att: Mr. Gregg.

Your letter of Jan. 22, 1929, received and also the completely executed contracts.

I noticed what you say in regards to it being impossible for me to get my equipment so that it will be able to catch the boat that leaves Seattle, on April 6th.

My idea is that at present and under the conditions we have to count on every day as my competitors might get enough money together and buy one of the cheap outfits that are now on the market. And put same in before I can get mine installed.

My desire is to make this a success and to give my public the best before this cheaper equipment is installed.

Also the Alaska Legislature will be in session the last of March to the first of May. During this session we have here people from the far north.

(Testimony of W. D. Gross.)

And to some of them this will be the only chance that they will ever get to hear the Vitaphone and Movitone. Also these months are my best months as we have a lot of outside people in town.

The few days earlier that I am asking for will do me more good than I can ever explain in letters

So therefore I would appreciate it very much if you will do all you can to get me this installation at the dates that I requested of you.

I will also be in Seattle, when you ship this equipment and I will wait there until your engineer goes to Ketchikan. At that time I will go with him. He will be able to locate me either on the film row or at the Atwood Hotel, Seattle, Wash.

I also want to mention again about the cancelling of the Non-Synchronous and Microphone attachments.

I had no business to contract for these in the first place. Also your agent Mr. Gage did not realize that I have \$18000.00 tied up in organs in my houses. So therefore I would appreciate it if you would be so kind as to cancel these two attachments.

If I have to use silent pictures, and there is no doubt but what I will. I will use the organ instead of the Non-Synchronous as this has been ruined already by a cheap [298] installation in both Ketchikan and Juneau. Also I know that I will not be able to give the satisfaction with the Non-Synchronous for silent pictures as I could with the organ.

(Testimony of W. D. Gross.)

In regards to the contracts for Vitaphone and Movitone for Petersburg, and Wrangell. Make the contracts out for you new and \$7000.00 equipment.

Hoping you will see your way clear to ship my installations on the dates that I requested and also I wish to thank you for your co-operation in all this I remain,

Very truly yours,

WDG/e

Signed: W. D. GROSS.

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Whereupon the following proceedings took place:

“Mr. HELLENTHAL: This letter I also object to as incompetent, irrelevant and immaterial, as relating to negotiations that lead up to the execution of the contract into which all the previous negotiations have merged, especially so in view of the fact that the contract specifically provides,—speaking of contract I mean the contracts of March 28th, 1929, specifically provided that there are no other agreements between the parties other than those embodied in the contract, specially as to the subject matter, either express or implied.

Mr. ROBERTSON: We again submit it goes at least to the credibility of the witness.

The COURT: The offer will be denied. We are going clear back into ancient history.

Mr. ROBERTSON: Object to the rejection in evidence of plaintiff's exhibit 36-C for iden-

(Testimony of W. D. Gross.)

tification, being a letter dated February 4, 1929, at least to test the credibility of the witness.

The COURT: Exception allowed. The letter shows on its face it has no reference to these contracts."

Thereupon Defendant Gross further testified: Plaintiff's letter to me dated January 22, 1929, is the reply that I received from plaintiff to my letter to it of January 6, 1929 for identification.

Whereupon plaintiff offered in evidence defendant's letter marked January 6, 1929, plaintiff's exhibit 36-D for identification, and plaintiff's letter January 22, 1929, marked plaintiff's exhibit No. 36-E for identification, which letters respectively read: [299]

EXHIBIT No. 36-D

Jan. 6, 1929

Electrical Research Products Inc.,  
250 West 57th St.,  
New York, N. Y.

Mr. E. S. Gregg.

Dear Mr. Gregg:

I received your registered letter of Dec. 29. Also the notes and checks which you enclosed and which I signed and left with your agent in Seattle. [300] I also noticed where you stated that your agent made a mistake on one of the notes. Which was for \$1130.00 and it should of been \$1698.00.

I am signing the notes that you sent and am forwarding same to you by registered mail today.



(Testimony of W. D. Gross.)

You will also note that I have changed the bank's name on the Ketchikan note to read for the bank here in Juneau. I have decided to handle these first two payments thru the B. M. Behrends Bank of Juneau, Alaska. As I will be here at the time that they are presented.

I also noticed what you say in regards to the date that you are going to ship the machines. The one to Ketchikan, on April 13 and the one to Juneau, ten days later which will make it the 23.

The only thing that I would like to request Mr. Gregg, is that you will send the first equipment to Ketchikan a little before this time. I would like very much if you would see that the equipment for Ketchikan, is in Seattle so that it can be shipped on the Alaska Steamship Co. boat that leaves Seattle, on April 6th. As my business in this time opens up around the fifteenth of April and by May first everything is going full blast. It stays that way for the season. By doing this I will be able to open up with your equipment on the opening of the season which is April the fifteenth.

The installation for Juneau, will have to be in Seattle, so that it will have time to catch the boat that leaves there on April 13th. Also be very sure and send everything by the Alaska Steamship Co. boats.

I want to be very sure of these dates and I would appreciate it very much if you would try and accommodate in regards to the above change of dates.

(Testimony of W. D. Gross.)

I will be in Seattle, around the 18 of March and I must have this confirmation so that I will be able to set my bookings. Also I will wait there until your engineer and installations arrive and go to Ketchikan with them. I will stay in Ketchikan, during the time that he is installing the machines there and will then come to Juneau with him. My address while I am in Seattle is The Atwood Hotel, or Warner Brothers Film Exchange. These of these two places will be able to tell your man where he can find me at any time.

So therefore kindly keep these dates before you and advise me when you return the contracts if they will be satisfactory and that I can depend on them.

The house in Ketchikan is as follows. Length 120 ft. Stage 16 ft. leaving house itself 104 ft. clear 50 ft. wide and 36 ft. high. Projection room is on the lower floor. The same as the Blue Mouse in Seattle, and is much larger than your requirements. 2 Simplex machines Peerless Arcs run either off a motor generator or mercury Arc. Projection throw 64 ft. Balcony over the booth and seats around 400.

The house in Juneau, length 110 ft stage 14 ft leaving house itself 96 ft 57 ft wide 19 ft height. Booth in balcony (I am remodeling Booth according your instructions) projection throw 67 ft two simplex machines equipt with Peerless Arc and will run either of the mercury rectifier or motor generator. [301]

(Testimony of W. D. Gross.)

I am hoping that this letter will furnish you with all the data and information that you require and if by chance you should need more I would be more than glad to co-operate with you in any way that I can.

We are going ahead and remodel the Booth in the Juneau house so that there will be no delay what so ever when your engineer is ready for same.

I am hoping to receive a reply by return mail and also that you will be able to ship as per my request. Also that everything is now settled and that I can go ahead and make the arrangements that I have been holding up on.

Thanking you for your co-operation in this matter I remain,

Very truly yours,

Signed: W. D. GROSS

P. S.

In regards to the other house that I requested a installation for. It is the Coliseum Theatre, Petersburg, Alaska. Mr. Enge.

Kindly make out contracts for this house and forward same to me here in Juneau. I will then forward them to Mr. Enge and have him sign same and send you a check for the deposit. Also make out all your notes, but leave the bank's name out so that I will be able to insert the bank's name that I want to handle these payments.

The house is as follows: length 110 ft stage 16 ft width 43 ft height 19 ft two new Simplex Machines

(Testimony of W. D. Gross.)

Peerless Are working off either mercury arc or generators and has a seating of about 550. A. C. Current 110 volts 60 Cycles.

He wants the same installation that I am going to put in.

In regards to the other house I will have to let you know when I am in Seattle. As I have to find out about the service for these houses. As if the prices are too high it will be unable to handle at this time as this town has nothing to draw from. Anyway I will advise you upon my arrival in Seattle in regards to this one.

ALSO WITHOUT FAIL KINDLY INSURE ALL THE EQUIPMENT THAT YOU SEND ON THE ALASKA STEAMSHIP CO.'S BOATS. ONLY INSURE FOR THE TIME IT IS ON THE BOATS.

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EXHIBIT 36-E

January 22, 1929

MR. W. D. GROSS,

The Alaska Film Exchange,

Coliseum Theatre Bldg.,

Juneau, Alaska

Dear Mr. Gross:

In acknowledging your letter of January 6th which gives details concerning the two theatres to be equipped with sound reproducing apparatus at Ketchikan and Juneau, Alaska, I enclose your copies of the contracts, completely executed.

(Testimony of W. D. Gross.)

You have requested that the shipment for Ketchikan be made early enough to catch that Alaska Steamship Company's boat on April 6th and that for Juneau to make the sailing on the 13th from Seattle. [302] Our allotments of equipment from the warehouse will not be available until the first of April and since the time for transcontinental shipment is around fifteen days, it will not be possible to send the Ketchikan equipment on the April 6th boat from Seattle. There is a possibility, however, that this first shipment can catch the April 13th boat from Seattle and until we hear further from you, we shall schedule it for that shipment date.

I am having the contracts drawn up for the Coliseum Theatre at Petersburg, Alaska, which you say you will forward to Mr. Enge for signature. These contracts, together with the appropriate notes (leaving blank the space for the bank's name) will be sent to you in an early mail.

Very truly yours,

HBA:AS

Signed: E. S. GREGG.

Enc.

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Whereupon the following proceedings took place:

Mr. HELLENTHAL: Your Honor, I will object to it as irrelevant, incompetent and immaterial, as being a matter relating to the installation of the machinery and the negotiations that were had would merge in the written contract, expressly so in view of the fact these particular contracts embody the provision that

(Testimony of W. D. Gross.)

there are no amendments, agreements and understandings between the parties other than those expressed in the contract, either implied or expressed.

The COURT: Both seem to be marked now as exhibits.

Mr. FAULKNER: It was offered yesterday Your Honor.

The COURT: Both for identification?

Mr. ROBERTSON: Yes.

The COURT: The offer will be refused.

Mr. ROBERTSON: Take an exception, Your Honor.

The COURT: In order to save a lot of time the court is not going to receive any correspondence here, including the letter which was received there of February 7th, if my recollection is right—

Mr. ROBERTSON: But I submit I have a right to make my offer so as to preserve my record on it. I take exception to the Court's ruling, refusing to admit in evidence plaintiff's exhibit "36-D" for identification letter dated January 6, 1929, and letter dated January 22, 1929 marked plaintiff's exhibit 36-E for identification. [303] And also to the Court's refusal to admit in evidence letter dated February 4, 1929 marked for identification plaintiff's exhibit "36".

Thereupon Defendant Gross further testified: I don't remember if I was here or not, but I pre-

(Testimony of W. D. Gross.)

sume this telegram dated January 29, 1930, was received by my manager, if I didn't receive it.

Thereupon said telegram was received in evidence marked

PLAINTIFF'S EXHIBIT No. 37,

and reads:

1/29/30

W. D. Gross  
c/o Coliseum Theatre  
Juneau Alaska

According our records your account in arrears as follows Coliseum Juneau four weeks billings plus merchandise items total hundred fifty nine dollars forty cents Coliseum Ketchikan four weeks billings plus merchandise total two hundred ten dollars twelve cents forward check by return mail to cover wire confirmation.

R. H. Pearsall  
Electrical Research Products Inc.

46 words, charge Electrical Research Products Inc.  
night letter  
RHP/HH

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Thereupon Defendant Gross further testified: The letter to me from plaintiff dated January 30, 1930, was received and my manager will testify to it.

Thereupon plaintiff's said letter to defendant was received in evidence, marked

(Testimony of W. D. Gross.)

## PLAINTIFF'S EXHIBIT No. 37-A

and reads:

January 30, 1930

Mr. W. D. Gross  
 c/o Coliseum Theatre  
 Juneau, Alaska

Re: Coliseum Theatre,  
 Juneau, Alaska  
 Coliseum Theatre  
 Ketchikan, Alaska.

Dear Sir:

This is to supplement my wire of even date. According to my records no payments have been received on the above accounts since your remittance covering the payments up to and including January 4. The accounts at present are in arrears as follows:

## Coliseum, Juneau

Weekly billings January 11, 18, 25, and February 1 .....	\$119.00
Merchandise items: November 23, \$28.50; December 1, \$7.40; December 31, \$4.50.....	40.40
Total.....	<u>\$159.40</u>

## Coliseum, Ketchikan [304]

Weekly billings January 11, 18, 25, February 1 .....	\$119.00
Merchandise items: November 25, \$18.67; December 1, \$13.85; December 31, \$15.90; January 2, \$4.20, \$2.50 and \$36.00.....	91.12
	<u>\$210.12</u>



(Testimony of W. D. Gross.)

Kindly arrange to make your future payments weekly and in advance in accordance with your contract, so that the account will at all times be up to date.

Very truly yours,

ELECTRICAL RESEARCH  
PRODUCTS INC.

By R. H. PEARSALL

RHP/HH

Credit & Collection Dept.

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Thereupon Defendant Gross further testified: My office or business will testify as to plaintiff's telegram dated March 5, 1930.

Whereupon said telegram was received in evidence marked

PLAINTIFF'S EXHIBIT No. 37-B

and reads:

3/5/30

W. D. Gross

Juneau, Alaska

Coliseum and Ketchikan accounts five weeks in arrears totaling hundred forty eight dollars seventy five cents each Stop Kindly forward check return mail Stop Wire confirmation

R. H. Pearsall

Electrical Research Products Inc.

26 words

Night Letter

RHP/HH

(Testimony of W. D. Gross.)

Thereupon defendant Gross further testified: My theatre received this telegram dated March 14, 1930.

Whereupon said telegram was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 37-C,

and reads:

3/14/30

W. D. Gross  
Coliseum Theatre  
Juneau, Alaska

Your accounts seven weeks in arrears totaling four hundred sixteen dollars fifty cents Stop Cannot permit continued use of equipment unless remittance in full received immediately Stop Wire confirmation

R. H. Pearsall

Electrical Research Products Inc.

Night Letter 30 words

RHP/HH

[305]

Thereupon defendant Gross further testified: My signature is affixed to my letter, dated April 23, 1930, to plaintiff.

Whereupon defendant's said letter to plaintiff, dated April 23, 1930, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 37-D

and reads:

(Testimony of W. D. Gross.)

THE ALASKA FILM EXCHANGE

W. D. Gross, Manager

Juneau, Alaska

April 23, 1930

Electrical Research Products Inc.

Los Angeles, Calif.

Att: Mr. Pearsall:

Dear Sir:

When I was in Seattle, I straighten up my account with Mr. Gage. To the amount of \$538.00.

At that time I requested a itemized statement of this account. To date I have failed to receive it.

I would appreciate it very much if you would be so kind as to forward me this statement.

Very truly yours,

WDG/c

(Signed) W. D. GROSS.

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Thereupon defendant Gross further testified: My manager will state whether or not we received plaintiff's letter to Gross, dated May 5, 1930.

Thereupon plaintiff's said letter to defendant, dated May 5, 1930, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 37-E,

and reads:

(Testimony of W. D. Gross.)

May 5, 1930

Mr. W. D. Gross  
 c/o Coliseum Theatre  
 Juneau, Alaska

Re: Coliseum Theatres  
 Juneau & Ketchikan, Alaska

Dear Sir:

This is to acknowledge receipt of your check in the amount of \$538. to pay the following items:

COLISEUM, JUNEAU		
W/E February 8, through March 29,	@ 29.75	\$238.00
Merchandise,	March 20,	31.00
		\$269.00
		[306]

Apparently, your request for this receipt was mislaid but I hope our failure to forward same has not caused you any inconvenience.

May I take this opportunity to call to your attention the present delinquencies on your account:

COLISEUM, JUNEAU		
W/E April 5, through May 3,	@ 29.75	\$148.75
Merchandise	April 17,	7.13
	April 18,	1.89
	April 22,	1.45
	April 24,	1.80
	Total	\$161.02
	Less Cr.	1.90 \$159.12

(Testimony of *W. D. Gross*.)

COLISEUM, KETCHIKAN

W/E April 5, through May 3,

@ 29.75		\$148.75	
Merchandise,	April 7,	12.08	
	April 17,	6.10	
	Total	<u>166.93</u>	
	Less Cr.	3.00	\$163.93

Thereupon Defendant *Gross* further testified: I didn't personally receive plaintiff's telegram to me dated May 21, 1930; my manager will answer questions regarding it.

Thereupon plaintiff's said telegram to defendant, dated May 21, 1930; was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 37-F,

and reads:

5/21/30

*W. D. Gross*

Coliseum Theatre

Juneau, Alaska

Your accounts seven weeks delinquent amounting four hundred sixteen dollars fifty cents plus merchandise nine dollars sixty five cents Juneau account fifteen dollars eighteen cents Ketchikan Stop Forward immediate check to cover wire confirmation

*R. H. Pearsall*

Electrical Research Products Inc.

34 Words—Night Letter

Chg: 70-1218

RHP/HK

(Testimony of W. D. Gross.)

Thereupon Defendant Gross further testified: Plaintiff's telegram to me dated May 28, 1930, was received by my office or my manager.

Whereupon plaintiff's said telegram to defendant, dated May 28, 1930, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 37-G,  
and reads: [307]

5/28/30

W. D. Gross  
Coliseum Theatre  
Juneau, Alaska

Refer my wire May twenty first your accounts now nine weeks delinquent amounting five hundred thirty five dollars fifty cents plus merchandise twenty three dollars one cent Ketchikan eleven dollars sixty cents Juneau Stop Cannot permit continued use of equipment unless remittance in full received immediately wire confirmation

R. H. Pearsall

Electrical Research Products Inc.

48 Words Night Letter

Chg: 70-1218

RHP/HK

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Thereupon Defendant Gross further testified: Plaintiff's telegram to me dated June 6, 1930, was received by my manager or office.

(Testimony of W. D. Gross.)

Thereupon plaintiff's said telegram to defendant dated June 6, 1930, was received in evidence marked

PLAINTIFF'S EXHIBIT No. 37-H,

and reads:

6/6/30

W. D. Gross  
Coliseum Theatre  
Juneau, Alaska

Your accounts delinquent five hundred seventy dollars twelve cents Stop Will be forced to refer legal department unless remittance in full received immediately Stop Wire confirmation

R. H. Pearsall

Electrical Research Products Inc.

26 Words—Night Letter

Chg: 70 1218

RHP/HK

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Thereupon Defendant Gross further testified: My office or manager received plaintiff's telegram to me, dated June 14, 1930.

Whereupon plaintiff's said telegram to defendant, dated June 14, 1930, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 37-I,

and reads: [308]

6/14/30

W. D. Gross  
Coliseum Theatre  
Juneau, Alaska

Retel thirteenth Coliseum accounts delinquent six hundred fifty four dollars fifty cents weekly billing

(Testimony of W. D. Gross.)

plus merchandise eleven dollars sixty cents Juneau  
twenty five dollars twenty two cents Ketchikan

R. H. Pearsall

Electrical Research Products Inc.

28 Words—Night Letter

Chg: 70-1218

RHP/HK

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Thereupon Defendant Gross further testified: My office received plaintiff's telegram to me, dated July 11, 1930.

Thereupon plaintiff's said telegram to defendant, dated July 11, 1930, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 37-J,

and reads:

4/11/30

W. D. Gross  
Coliseum Theatre  
Juneau, Alaska

Your accounts fourteen weeks delinquent plus merchandise twenty two dollars eighty cents Juneau account thirty nine dollars forty cents Ketchikan strict adherence to your contract is expected on these accounts and unless immediate remittance in



(Testimony of *W. D. Gross*.)

full is received will be forced to refer your accounts to legal department wire confirmation

R. H. Pearsall

Electrical Research Products Inc.

50 Words—Night Letter

Chg: 70-1218

RHP/HK

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Thereupon Defendant *Gross* further testified: My office received plaintiff's telegram to me, dated September 22, 1930.

Thereupon plaintiff's said telegram to *Gross* dated September 22, 1930, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 37-K

and reads: [309]

September 22, 1930

*W. D. Gross*

Juneau, Alaska

In reply your letter fifteenth cannot alter present contracts relative service charges Stop Total delinquency Coliseum Theatres Juneau and Ketchikan now fifteen hundred sixty-two dollars ninety-five cents Stop Unless payment received in full by October third will refer accounts legal department

R. H. Pearsall

Credit & Collection Dept.

Night Letter

RHP/Ar

43 70-1218

(Testimony of W. D. Gross.)

Thereupon Witness Gross further testified: I was in Juneau when I wrote my letter of February 17, 1930, to plaintiff, defendant's exhibit F-4; I didn't go to Seattle until after I had written that letter of March 28, 1930, defendant's exhibit F-5; my manager reported that box office receipts both in my Juneau and Ketchikan theatres were attached but I have no recollection of it and am not positive about it.

After plaintiff's talkie equipment was installed in the Juneau Coliseum Theatre about May 10, 1929, we charged an admission price of \$1.00 and kept up that price until the pictures dropped but I can't tell the time and have no idea of the number of months; in Ketchikan after we installed plaintiff's equipment there about June 1, 1929, the admission price was \$1.00 and it continued until the pictures dropped, but I don't know for how many months and my books won't show that, my books wouldn't show the price, just the receipts; the only day book that I have is the bank account book, which is true both of Ketchikan and Juneau during all of this period; I formerly ran silents three times a week in each theatre and sound once a week until silents were abolished one year after the equipments were installed, when the admission price in both theatres was dropped to 75¢, but I don't know how long that continued; we dropped the admission price in Juneau to 50¢ about January [310] 15, 1931, and also in Ketchikan at the same time, because pictures were

(Testimony of W. D. Gross.)

cheaper; that was the day the Capitol started in Juneau under new management; we had always had quite a little competition but it had not affected my business a bit; that is true, both of Juneau and Ketchikan; I don't know how long I continued at the 50¢ price and have no record that will show of either Juneau or Ketchikan; neither my manager nor other people would have a record of that fact; we destroy our records everywhere; sometimes keep them a year and a half and then destroy them; but we don't destroy them until after the income tax return is made up; don't think we have any records for 1933, 1932, or 1931; I don't know the dates when we dropped our admissions and have no way of stating it at this time; none of my employees has any record of that; I have copies of my income tax return for 1929, 1931, 1932, and 1933; my income tax returns show all the rent money and all the theatres I run under my control; everything I take in, at the seven theatres, is shown on that; I don't make a separate return for the Alaska Film Exchange, that is just a clearing house for myself; I am willing to produce my income tax reports, Witness Tuckett will deliver them;

I never increased my seating capacity in the Juneau Coliseum Theatre but took a lot of seats out gradually after the business dropped off when we put in the Universal High Power equipment; I acted as general manager for both my theatres, I didn't make any charge for salary, took the profit

(Testimony of W. D. Gross.)

as salary, just drew what I needed; after April 20, 1931, I took money from the Petersburg, Wrangell, Douglas, Haines, and Sitka Theatres and deposited it in the Alaska Film Exchange and then it would pay for the Juneau and Ketchikan Theatres; I drew the checks; sometimes I made the entry in the books, sometimes Tuckett did; if Tuckett was here he kept my books, if I was here and Tuckett wasn't, I kept the books, I kept a separate set for Ketchikan in Juneau; my Ketchikan manager didn't have any authority to draw checks; everything was signed by me.

My Juneau Theatre is situated in the Coliseum Building and I don't charge myself any rent for the theatre in that building; [311] I never charged any rent to the theatre for the use of any other part of that building; the Coliseum Building in Ketchikan has no apartments or living quarters in it; I had separate meters for the theatre and apartments in the Coliseum Building Juneau, but not for my office where the Alaska Film Exchange is located and I never charged it any rent; I ran all my theatres from that one office under the same management; Tuckett was my Juneau manager, I was general manager, and Louis Lemieux was Ketchikan local manager most of the time.

I had three operators in my Juneau Theatre on May 10, 1929, L. C. Lemieux, Ned Lemieux, and Billy Burke, and paid them each \$150.00 to \$175.00; that went into effect when we got sound; I paid

(Testimony of W. D. Gross.)

Tuckett \$250.00 a month until we started to lose business, after plaintiff took the machines out; I paid him \$250.00 right along from May 11, 1929, until April 20, 1931; I paid Louis Lemieux \$250.00 a month for the same period; after Ned Lemieux went to Haines I raised his wages to \$225.00 a month; Donald Sinclair and Zolman Gross took his place and I paid Zolman \$100.00 a month until the present time and Donald Sinclair \$150.00 a month up until May 1, 1933; I also had porters for the Juneau Coliseum Theatre, whom I paid \$175.00 a month all this time until they took out the machines, April 20, 1931. I didn't discharge him then. His pay went down from \$175.00 to \$125.00, then \$75.00, then \$50.00 a month when he quit.

Business went down as soon as we lost the talkie equipment on April 20, 1931; it hadn't started to go down before that but had gone up all the time; in Ketchikan I had Louis Lemieux, paying him \$250.00 a month from July, 1929, until I had to put in the Wonderphone or Masterphone equipment, about April 24, 1931; I paid Ralph Bontrager \$175.00 a month right along until April 24, 1931, and Ole Olsen \$100.00 a month right along until May 1, 1933; also I had a porter named Steve Sarakoff, he is in the books there, I don't know just how long I paid him \$185.00, a month.

Whereupon the following proceedings took place:  
[312]

Q. Between May 11th, 1929 and April 20th, 1931 what did your advertisements cost in the Juneau Coliseum theatre?

(Testimony of W. D. Gross.)

Mr. HELLENTHAL: That is a matter which will also be covered by Mr. Tuckett. I don't think Mr. Gross knows anything about it.

The COURT: I imagine the books themselves will show. I don't know how any witness can carry all these details in his head. I don't believe we are getting anywhere at all, we will be going over the same ground as soon as the books are produced.

Mr. ROBERTSON: He has no books except the check register, which they assured us was the only books they had. We haven't yet got all those.

The COURT: The witness keeps talking about "the books will show." If he has any books which will show that, let's have the books.

Q. Mr. Gross, aren't those the only books you have, these bank check registers?

A. Yes.

Q. You have no other books of any kind whatever?

A. No, only just books with conditional bill of sale contracts, or any contract I mark down in a ledger, I owe him so much and credit him every time we pay him an amount.

Q. You have a ledger besides?

A. Yes, but only for the creditors. This is a cash book. We never done credit with anybody, only if I build an apartment house and they take credit, we mark down in the ledger as a

(Testimony of W. D. Gross.)

credit and we mark it down here; these books show everything we pay out.

Q. You have absolutely no other books besides these five check books?

A. That is how I carried on the business right along.

Q. You have some kind of a ledger?

A. Just a ledger for the creditors. We mark down we owe them so much money.

The COURT: Haven't you any books showing what employees you had at different times and how much you paid them?

A. Yes, this Your Honor.

The COURT: What you paid for advertising?

A. Yes.

The COURT: All contained in those books?

A. Yes, every month it will show that.

Mr. RODEN: That is not so, Your Honor.

Mr. ROBERTSON: We would like to have the ledger produced, Your Honor. [313]

Mr. HELLENTHAL: I don't know there is such a book, Mr. Robertson.

The WITNESS: If there is any books for 1931 or 1933 whatever we will produce them. Mr. Tuckett must have them in his possession.

Q. (Mr. HELLENTHAL): What is that ledger? Has it anything to do with the theatre business?

(Testimony of W. D. Gross.)

A. No. Just a credit business I got on conditional bills of sale contract.

Q. (Mr. HELLENTHAL): It has nothing to do with the theatre?

A. No.

Q. (Mr. HELLENTHAL): Any entries in it relating to the theatres?

A. No, nothing at all; just under "apartments" any credits that we get that is the only way I keep track of it.

Mr. RODEN: This is nothing but a check deposit, to show the check was issued and to whom it was issued and the amount. It doesn't say what it was for or anything else.

The COURT: It is not proper cross examination; there is no question about that.

Thereupon Defendant Gross further testified: The receipts of my Juneau Theatre did not take a considerable drop as early as February, 1930; the receipts for my theatre did not take a considerable drop when the Capitol Theatre started up in January, 1931; the receipts for my Ketchikan Theatre did not take a considerable drop as early as December, 1929; business in my Juneau and Ketchikan Theatres was not bad in the fall of 1930; it is not true that the reason why I didn't pay the service charges was because of the bad condition of my business in both those houses; I wrote this letter addressed to plaintiff dated March 1, 1930, and it bears my signature.



(Testimony of W. D. Gross.)

Thereupon defendant's letter to plaintiff dated November 1, 1930, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 38,

and reads:

THE ALASKA FILM EXCHANGE

Juneau, Alaska

Nov. 1, 1930

Electrical Research Product Inc.

Los Angeles, Calif.

Mr. Pearsall:

[314]

Dear Sir:

Enclosed you will please find check for the amount of \$500.00. Kindly credit same to my account.

Just as soon as business picks up a little and I am able I will again remit to you. As it is now business is very bad and we are hardly every out of the red. Anyway within the next 30 or 60 days I expect to have this account straightened up in full.

Thanking you for your co-operation in this matter in advance I remain,

Very truly yours,

WDG/x

(Signed) W. D. GROSS.

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Whereupon Defendant Gross further testified: I wrote that letter of November 1, 1930, but business hadn't been bad all that fall. I signed my letter to plaintiff of September 15, 1930.

(Testimony of W. D. Gross.)

Whereupon Defendant's letter to plaintiff dated September 15, 1930, was received in evidence, marked

PLAINTIFF'S EXHIBIT No. 39

and reads:

THE ALASKA FILM EXCHANGE

Juneau, Alaska

Sept. 15, 1930

Electrical Research Products Inc.

7064 Hollywood Blvd.

Los Angeles, Calif.

Gentlemen:

I notice that the Service Charges have piled up again on our Western Electric equipment.

I will state that it is impossible to pay these Service Charges as we have numerous other expenses to meet and have to keep our theatres running but find it impossible to do so and still pay you Service Charges.

I feel that I have done more than anybody else has done towards the Electrical Research Products Inc. I paid out \$21,000 for the machines and also about \$3,000 for service which I never received value.

I therefore feel that my help can take care of the equipment and if we need any service will wire to Seattle and pay the expenses from Seattle to either Juneau or Ketchikan whatever the case may be. This is the best I can do at present.

(Testimony of W. D. Gross.)

I would like to receive a letter from you in regards to your opinion to the Service Charge, as if I have to pay Service Charges for 10 years I would rather install RCA and by using their equipment I wouldn't have to pay any Service Charge.

Please let me know what your intentions are as I will have to prepare for another mechanism.

Yours truly,

WDG/ZG

(Signed) W. D. GROSS. [315]

#### Redirect Examination

Thereupon Defendant Gross further testified: When I put sound equipment in my Ketchikan and Juneau Theatres in 1929, there was no other sound equipment in use in Alaska; I went to Seattle some time in September, 1929; I said in my Cross Examination that Captain Lathrop offered me \$150,000.00 for my Juneau and Ketchikan Theatres.

Thereupon the following proceedings took place:

Q. When was it Captain Lathrop made you that offer?

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial. It was only brought out in his testimony as what he claimed he told me in my office.

The COURT: You may ask him.

Mr. ROBERTSON: Exception.

Thereupon Defendant Gross testified: Captain Lathrop made me that offer when I was running silent pictures. when business was good, several years before I talked with Attorney Robertson about

(Testimony of W. D. Gross.)

taking the equipment out of my theatres; I had three conversations with Witness Gage about the service matter; Witness Cawthorn was with me on the first occasion, some time in the first part of April, 1929, in a restaurant; Cawthorn was with me on the occasion when I signed those supplemental agreements, plaintiff's exhibits Nos. 2 and 4, in September, 1929; nobody was with me when I paid Gage \$538.00 in April, 1930; at that time Gage said that if I don't pay the money he has a bill for he will tear the equipment out, which was in addition to the chicken story; I wrote the letter, defendant's exhibit No. F-5, not in Juneau, but in Seattle; when I first put in talkie equipment, talkie films were around \$500.00 a picture and \$100.00 for a record—that was when I was charging \$1.00 admission; as the price of pictures dropped I put the price of admission down; during the time that I ran the silent pictures part of the week and sound part of the week, I charged 50¢ when I ran the silents and \$1.00 when I ran the talkies.

Whereupon the following proceedings took place:  
[316]

Q. Now, Mr. Gross, referring to these reports of Mr. Shearer that have been offered in evidence—— What was the reason, if any, that the Coliseum Theatre in Juneau didn't commence to show profits after Shearer took hold of it.

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial.

(Testimony of W. D. Gross.)

The COURT: He may answer.

Mr. ROBERTSON: Exception, Your Honor.

A. The Coliseum theatre—Shearer made it as a sluff-off house, put cheaper pictures in,—the Capitol—his own theatre—he wanted to bring it up to a high price theatre and charged 40 cents where the Coliseum theatre was only 25 cents.

Q. Cut the Coliseum theatre down to a twenty-five cent place?

A. Where the Capitol was forty cents, running outstanding pictures.

Q. What was the character of the pictures he ran in the Coliseum theatre?

A. Cheap pictures.

Thereupon Defendant Gross further testified: I ran in the Coliseum Theatre before I turned it over to Shearer the best pictures manufactured in the United States and the same way in Ketchikan, but after Shearer got hold of the theatres in Ketchikan, he charged 40¢ in the Coliseum and 40¢ in the Revilla and divided the pictures equally between the houses, good or bad.

#### Re-Cross Examination

Thereupon Witness Gross further testified: I said my five theatres in the other towns supported my Juneau and Ketchikan theatres towards the last; and the talkie equipment in those five theatres was the same kind of equipment I had in the Juneau

(Testimony of W. D. Gross.)

and Ketchikan theatres after plaintiff's equipment was taken out.

#### Re-Direct Examination

Thereupon defendant Gross further testified: There was no RCA or Western Electric equipment in competition with those theatres. [317]

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#### H. E. CAWTHORNE

Thereupon H. E. Cawthorne, defendant's witness, being first duly sworn testified:

#### Direct Examination

I am and for over twenty years have been in the picture show business and have operated talking equipment here and in Seattle in my own theatre, and operated practically all kinds of sound equipment, RCA, Western Electric, and independent equipments; I operated Western Electric in Seattle and was running my own theatre; I know the meaning attached to the word "service", when used in connection with equipment by those engaged in the moving picture business.

Whereupon the following proceedings took place:

Q. Now, I will ask you what that meaning is, if any?

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial, and an attempt to vary the terms of a written contract by parole evidence.

(Testimony of H. E. Cawthorne.)

Mr. HELLENTHAL: Only a matter of interpretation.

The COURT: He may answer.

Mr. ROBERTSON: Exception.

A. "Service" as applied to the moving picture machines, as other machines, means to keep those machines in perfect running order, perfect condition.

Q. At all times?

A. At all times.

Mr. ROBERTSON: Object as very leading, if the court please.

Q. What is the meaning of terms "inspection" and "minor adjustment" when employed by those engaged in the sound equipment business?

Mr. ROBERTSON: Same objection.

The COURT: He may answer.

Mr. ROBERTSON: Exception.

A. "Inspection" could be made for any part of the theatre, that is, as far as the sound is concerned, the "minor adjustments" might mean just focussing an exciter lamp or something of that kind, not really repairing anything.

Q. Not repairing anything?

A. No.

Q. When you repair a machine what do you call that? [318]

A. Repair would be overhauling, keeping it up.

(Testimony of H. E. Cawthorne.)

Q. What do you call that?

Mr. ROBERTSON: Same objection, if the court please.

Q. Would you call that service or inspection?

A. I would call that "service."

Q. But merely adjusting it you call minor adjustment?

A. Minor adjustment.

Thereupon Witness Cawthorne further testified I had the regular Western Electric Company contract for service in Seattle and paid a weekly service charge, and to the best of my knowledge the contracts I operated under and the Gross contracts are identical; the service clause was in the contracts, that is if Gross had service; my service clause was filled in, stating how much I had to pay; it wasn't left blank like defendant's.

Whereupon the following proceedings took place:

Q. What did you get in the way of service, under your contract?

Mr. ROBERTSON: Same objection to that, if the court please.

The COURT: Overruled.

A. We got weekly service—a man called at the theatre. We were supposed to have weekly service. Sometimes it was ten days, but generally a weekly service, on a given day at a given hour, and the man came in and gave the machine a complete going over, that is, looking



(Testimony of H. E. Cawthorne.)

over the tubes, exciter lamps, lenses, batteries, switches.

Q. Is that what you in your business call "service" or inspection?

Mr. ROBERTSON: Same objection to that, if the court please.

Q. That weekly visit.

The COURT: Objection overruled.

A. I called that service. We could call him at any time and he would give us that service at any time we needed him.

Thereupon Witness Cawthorne further testified: We could get him any time of the day or night; we had his telephone number; they supplied us with the telephone number and we could always get a service man; it would not take very long to get there; those weekly visits were on service, but of course sometimes it was merely on inspection but if he found anything that needed service, he serviced it: [319] if there were no repairs made I would call the weekly visits inspections; if the machines needed service he gave them service; I have known Defendant fifteen years; in April, 1929, I was defendant's outside representative, living in Seattle and looking after his affairs and during that month he and I saw Witness Gage on Film Row and we went to the Rendevous Restaurant.

Whereupon the following proceedings took place:

Q. While you were with Mr. Gage on that occasion, either in the restaurant or before you

(Testimony of H. E. Cawthorne.)

went in, what, if anything, did Mr. Gage say to you with reference to the contract that Mr. Gross has since been operating under, that is the contracts of March 28th, 1929?

Mr. ROBERTSON: Assuming that is for the purpose of adducing evidence under the defense relative to duress and the counter-claim under duress I object as incompetent, irrelevant and immaterial, on the theory there is no valid duress pleaded in either.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

A. Mr. Gage called to Mr. Gross, we was on one side of the street and Mr. Gage on the other, met in the middle of the street. Gage informed Mr. Gross that he had got the contracts through with "Erpi" for Mr. Gross, without service charges, and congratulated Mr. Gross on his good fortune in getting equipment for Alaska, told him that the contracts had went through.

Thereupon Witness Cawthorne further testified: My employment with defendant continued up until December, 1929, and on December 30, 1929, I met him in Seattle and went with him to Gage's office.

Whereupon the following proceedings took place:

Q. What happened after you got into Mr. Gage's office? State what it was about and what transacted.

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial.

(Testimony of H. E. Cawthorne.)

The COURT: Overruled.

Mr. ROBERTSON: Exception.

A. Well, as soon as we came into the office Mr. Gage was sitting there and he greeted Mr. Gross and I, and Mr. Gross wanted to know what all this rumpus about service charges was, said he had received a wire from his manager in Ketchikan stating the Western Electric was trying to collect some kind of service charge and wanted to know what it was all about. Mr. Gage stated the company was now in a position to render service up there and they was demanding him that he pay service charges. Mr. Gross argued he had no service charges and was trying to verify the fact by Mr. Gage. The argument was quite lengthy and quite heated, they got pretty warm on both sides for quite a while. Finally Mr. Gage said that he had no alternative that [320] the company wanted these services and he was only working for the company and he had to obey or do as they told him, so he said, "There is no out, you have got to pay these service charges and sign" an agreement of some kind.

Q. Did he bring out the agreements?

A. And with that he pushed a couple of sheets or a couple of documents across the table and told Dave that he had to sign those papers and pay the money right then or he would not

(Testimony of H. E. Cawthorne.)

accept any more money either on the contract or anything unless the services were paid and those papers signed. Mr. Gross and I we started

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Q. Did he say anything further about the equipment?

A. Well, yes, he did. We started arguing among ourselves. He turned around and says, "There is no use in arguing, this thing. If you don't sign those papers, pay this money, Dave, they will come up there and tear your equipment out just like the telephone man tears the phone off the wall if the telephone isn't paid for.

Q. Did he say "he" or "they" would do it?

A. I wouldn't say whether "he" or "they"—that the Western Electric Company would do it.

Q. Then what happened?

A. Mr. Gross and I went into a conference, and he brought out the fact Mr. Gross didn't have all of his original—that is all of the payments on his original purchase or contract made, and that if he didn't or wouldn't accept any more money on it he was afraid they could and would take the machines away from him.

Mr. ROBERTSON: I move to strike as a conclusion, that "he was afraid they would take them out" as not proper testimony.

(Testimony of H. E. Cawthorne.)

The COURT: Motion sustained.

A. Mr. Gage was sitting right across the  
able from him.

The COURT: Was he present?

A. Yes, he was.

The COURT: Very well.

A. So he decided then that, or we, Gross  
and I, decided Mr. Gage did have the authority  
and would take the machines away from him,  
so with that he paid the money demanded,  
some nine hundred and some odd dollars and  
signed the documents.

Q. Both papers?

A. Both papers.

Q. What, if anything, further, did Mr. Gage  
say at that time with relation to service?

A. He got friendly with Mr. Gross again  
then and congratulated Mr. Gross on his good  
judgment, and said that was the best thing  
he ever done and he said, "Now you are going  
to get real service at Ketchikan and Juneau,"  
and he said that he would establish an office  
in Juneau with a service man in both Ketchikan  
and Juneau. [321]

Q. Mr. Cawthorne, after you and Mr. Gage  
and Mr. Gross went into the restaurant on that  
occasion did Mr. Gage say anything more about  
service?

A. Yes sir.

Q. What was it, please?

(Testimony of H. E. Cawthorne.)

Mr. ROBERTSON: Object as incompetent, irrelevant and immaterial.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

A. During the course of the conversation, Mr. Gage said to Mr. Gross, "Well, now, Dave, I hope you never have to send for that service man."

#### Cross Examination

Thereupon Witness Cawthorne further testified: I was in defendant's employ about nine years from 1926 up to and including the present time and now manage his Petersburg Theatre and have been doing so for about sixteen months; prior to that I ran and was manager of his Ketchikan Theatre about a year; I went there the latter part of June, 1932; prior to that I was working for him in Seattle doing outside work like buying and booking pictures and anything he wanted me to do outside in conjunction with my own work; the first conversation between Gage, defendant and myself was in April, 1929, on Film Row in Seattle; the next was in December, 1929, in Gage's office in Seattle; the equipments at that time were in Juneau and Ketchikan; I ran the Mission Theatre in Seattle for about five months starting January 1, 1932, and until some time in May, 1932; I operated theatres at various times in Seattle ever since 1908 at different places; I also operated the Grand Theatre in Seattle up until about the time we had this con-

(Testimony of H. E. Cawthorne.)

versation with Gage in 1929; I believe from January 1929 until September, 1929, part of the time managing it for defendant and afterwards I had a lease on it; I didn't have a contract relative to talkie equipment for the Grand Theatre with the Western Electric; the contract I had was for the Mission Theatre when I had the lease for five months in 1932; but I didn't personally hold the contract, I believe Mr. Lucan, the manager of a chain of suburban theatres held it; I leased the Mission Theatre from him and operated on my own hook; I saw the Lucan contract when I signed the lease in Lucan's office in the Beacon Theatre; I didn't take a copy of it; [322] I don't believe I ever saw the contracts, plaintiff's exhibits Nos. 1 and 3, after they were signed but I read those contracts after I came here; with the exception of a rider stuck in defendant's contracts there were a couple of little loose riders in there, to the best of my knowledge they were identical with the Lucan contract but I don't remember what were on the riders in the contracts; Lucan had a regular printed form of contract in 1932 with plaintiff but I don't know how long he had had it at that time or its date; I believe in the Lucan contract there were two mentions of the word "service" one for Minor adjustment and inspection and another clause that mentioned service, but they were both very vague, there was no real definition in regard to the word "service" or of the word "inspection" or of the words

(Testimony of H. E. Cawthorne.)

“minor adjustment”; the equipment in the Mission Theatre under the Lucan contract wasn’t actually serviced more than two or three times while I had it because the equipment didn’t need it at that time and I excused the service man and used to sign his blanks when he wanted to get in a date or something—I would sign his blanks so it wasn’t really service all the time he was there but on two or three times he came in and did do something; his name was Johnson; he was plaintiff’s man; as I remember, I believe he called on Wednesdays. [323]

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CHARLES M. TUCKETT,

defendant’s witness, being first duly sworn, testified:

Direct Examination

I live in Portland, Oregon where I am employed as district representative of the Portland General Electric Company. I worked for defendant from August, 1925, to May, 1933, having been operator for approximately the first year and after that manager; when defendant was out of town he turned his books over to me and I kept them as I was the only one who could understand his system of keeping these books. I am familiar with them; they contain all the records of the business transactions of the Coliseum Theatre at Juneau from 1927 until the present date, and the Alaska Film Exchange the



(Testimony of Charles M. Tuckett.)

same, and of the Coliseum Theatre in Ketchikan from 1927 until 1933.

Whereupon the books referred to by witness were offered in evidence, to which plaintiff objected as follows: "We assume they are offered in evidence in connection with the First and Third Counter-claims and object to them as incompetent, irrelevant and immaterial", upon which objection the Court ruled: "They may be received at this time with the understanding that they are properly connected up", to which ruling plaintiff excepted, whereupon said books were received in evidence and marked as

DEFENDANT'S EXHIBITS H-1, H-2, H-3, H-4,  
H-5, H-6 and H-7,

which original exhibits are hereby incorporated herein because typewriting would not show the different colors in ink and lead pencil in which they are written or show corrections, interlineations and amendments therein, and made a part hereof.

Thereupon Witness Tuckett further testified: Defendant originally in his theatres has what he calls daily reports, in which the box office or cashier makes up a statement of the night's business; from that statement the manager of the theatre checks up the cash received and deposits it in the bank; we take the daily report and check it against the deposits that were made in the book; those daily reports were destroyed after we checked them up with the internal revenue and these are the only books now in existence; [324] they show all expenditures

(Testimony of Charles M. Tuckett.)

including salaries, repairs, replacements, and cost of film, in fact all of defendant's business applying to the Theatres, both receipts and expenditures. The receipts, being the deposits, are marked on the outside edge, I think under "bank balance"; no check book is kept besides these books, these are the check books, we just use blank checks which do not come out of the book and have no check stubs. These books contain the check stubs and register and that kind of thing. This paper marked defendant's Exhibit I for identification is the work sheet that witness Stabler and myself made up for the entire year 1929 of the Coliseum Theatre at Ketchikan, the top sheet being a summary of the work sheets, which show the expenses, the different people we paid, the different amounts, the total, the gross receipts for each month and is taken from each individual item on the books and is entirely accurate.

Whereupon said document was offered in evidence, to which plaintiff objected on the ground that it was incompetent, irrelevant and immaterial, which objection was over-ruled, to which ruling plaintiff excepted. Whereupon said work sheet was admitted in evidence, marked Defendant's Exhibit I, and reads as follows: [325]

(Testimony of Charles M. Tuckett.)

EXHIBIT No. I.

PROFIT AND LOSS STATEMENT  
1929

COLISEUM THEATRE  
KETCHIKAN, ALASKA

	Total Receipts	Total Expenses	Net Profit	Net Loss
January	\$ 2,203.90	\$ 2,166.46	\$ 37.44	
February	2,222.15	1,876.30	345.85	
March	2,489.95	1,293.31	1,196.64	
April	2,697.50	1,539.29	1,158.21	
May	3,766.30	2,012.06	1,754.24	
June	5,931.00	2,270.17	3,660.83	
July	6,234.07	4,220.48	2,013.59	
August	7,519.70	3,236.05	4,283.65	
September	6,682.75	2,635.33	4,047.42	
October	7,209.70	2,698.26	4,511.44	
November	5,705.85	2,472.71	3,233.14	
December	4,314.20	2,497.11	1,817.09	
	<hr/> 56,977.07	<hr/> 28,917.53	<hr/> 28,059.54	
	28,917.53			
Proof:	<hr/> 28,059.54			

Memorandum:

Net Profit for year 1929 .....	\$28,059.54
Depreciation taken during year 1929.....	5,717.25
	<hr/>
Actual Net Profit for Year 1929.....	\$22,342.29
	<hr/> <hr/>

[326]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR JANUARY, 1929.

Working sheet shows following items:

Wages: F. O. Meeker, \$100.00—Arthur Biggs, \$200.00—Cliff Daigler, \$175.00—Ralph Bontrazer \$135.00—Florence Bontrazer, \$15.00—Miss Hardcastle, \$35.00—M. McTague, \$25.00	
Film Rental: Warner Bros. 25%, \$145.87—Educational 25%, \$26.62—United Artists 25%, \$94.37—Pathe Films 25%, \$208.41.	
Film Freight: Aaa. S. S. Co. \$21.60	
General Expense: None.	
Replacements & Repairs: Vic Lougheed, \$311.05.	
Advertising: Aaa. Chronicle, \$91.05.	
Lights, Water, Tele.: City Lite & Power \$102.92.	
Heat: None.	
Insurance & Taxes: Davis & Johnson, \$312.50.	
Rental: Rental all. 6%, \$168.07.	
Gross Receipts: .....	\$2,203.90
Totals: Wages, \$685.00	
Film Rental, \$475.27	
Film Freight, \$21.60	
Replacements & Repairs, \$311.05	
Advertising, \$91.05	
Lights, Water, Tele., \$102.92	
Insurance & Taxes, \$312.50	
Rental, \$168.07—Total .....	2,166.46

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Net Profit.....\$ 37.44

## Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR FEB., 1929.

Working sheet shows following items:

Wages: Katherine Harcastle, \$35.00—G. Kirby, \$25.00—Arthur Biggs, \$200.00—Ralph Bontrager, \$170.00—Cliff Daigler, \$200.00.	
Film Rental: United Artists 25%, \$39.85—Educational Films, 25%, \$25.62—Famous Players, 25%, \$78.10—Pathe Films 25%, \$52.48—Famous Players 25%, \$116.04—Educational Films 25%, \$32.12—Columbia Films 25%, \$52.50—Pathe Film 25%, \$107.59.	
Film Freight: None.	
General Expense: Redmonds, \$12.50.	
Replacements, Repairs: Repairs, \$165.23.	
Adv.: Ketchikan Chronicle, \$102.30 — William Paul, \$40.00—Western Poster, \$6.54.	
Light, Water, Tele: <u>Citizens' Light &amp; Power</u> , \$121.95.	
Heat: Standard Oil, \$112.16.	
Insurance, Taxes: None.	
Rental: Rental all 6%, \$168.07.	
Hauling: No Delay Transfer, \$13.25.	
Gross Receipts: .....	\$2222.15
Totals: Wages, \$630.00	
Film Rental, \$504.30	
Film Freight, None	
General Expense, \$12.50	
Replacement, Repairs, \$165.23	
Adv., \$148.84	
Light, Water, Tele., \$121.95	
Heat, \$112.16—Insurance, Taxes, None	
Rental, \$168.07—Hauling, \$13.25.	
Total .....	1876.30
Net Profit.....	\$ 345.85

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR MARCH, 1929.

Working sheet shows following items:

Wages: R. Bentrager, \$170.00—Art Biggs, \$200.00  
 C. Daigler, \$200.00—M. Rogers, \$50.00—A.  
 Kirby, \$30.00.

Film Rental: Columbia Films 25%, \$12.44—Unit-  
 ed Artists 25%, \$8491—Warner Bros., 25%,  
 \$76.45.

Film Freight: Aaa. S. S. Co., \$10.71.

General Expense: None.

Replacement, Repairs: J. R. Heckman, \$40.00.

Adv: Chronicle, \$90.50.

Light, Water, Tele: C. L. & P. Co., \$110.45.

Heat: Standard Oil, \$69.78.

Insurance, Taxes: None.

Rental: Rental all 6%, \$168.07.

Hauling: None.

Gross Receipts: .....\$2489.95

Totals: Wages, \$630.00

Film Rental, \$173.80

Film Freight, \$10.71

General Expense, None

Replacement, Repairs, \$40.00

Adv., \$90.50

Light, Water, Tele., \$110.45

Heat, \$69.78—Insurance, Taxes, None

Rental, \$168.07—Hauling, None.

Total ..... 1293.31

Net Profit.....\$1196.64

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR APRIL, 1929.

Working sheet shows following items:

Wages: Ralph Bontrager, \$170.00—C. Daigler, \$200.00—Dorothy Manning, \$170.00—M. Rogers, \$30.00—G. Kirby, \$30.00.

Film Rental: Pathe Films 25%, \$76.28—Educational Films 25%, \$25.62—United Artists 25%, \$111.64—Famous Players 25%, \$125.78—Fox Films 25%, \$176.63—Educational 25%, \$25.62.

Film Freight: None.

General Expense: None.

Adv: Chronicle, \$81.25.

Light, Water, Tele: C. L. & P. Co., \$148.40.

Heat: None.

Insurance, Taxes: None.

Rental: Rental all 6%, \$168.07.

Hauling: None.

Gross Receipts: .....\$2697.50

Totals: Wages, \$600.00

Film Rental, \$541.57

Film Freight, None

General Expense, None

Replacement, Repairs, None

Adv., \$81.25

Light, Water, Tele., \$148.40

Heat, None—Insurance, Taxes, None

Rental, \$168.07—Hauling, None.

Total ..... 1539.29

Net Profit.....\$1158.21

(Testimony of Charles M. Tuckett.)  
Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR MAY, 1929.

Working sheet shows following items:

Wages: M. Rogers, \$30.00—G. Kirby, \$30.00—  
C. Daigler, \$400.00—Dorothy Manning, \$150.00  
—R. Bontrager, \$170.00.

Film Rental: Fox Film 25%, \$269.58—Warner  
Bros., 25%, \$309.03— Educational Films 25%,  
\$32.12.

Film Freight: Expense, \$12.97—Aaa. S. S. Co.,  
\$184.83.

General Expense: None.

Replacement, Repairs: G. R. Heckman, \$24.15.

Adv: Chronicle, \$63.35—Harrison Reports, \$12.50.

Light, Water, Tele: C. L. & P. Co., \$126.18.

Heat: \$29.28.

Taxes: None.

Rental: Rental all 6%, \$168.07.

Hauling: None.

Gross Receipts: .....\$3766.30

Totals: Wages, \$780.00

Film Rental, \$610.73

Film Freight \$197.80

General Expense, None

Replacement, Repairs, \$24.15

Adv., \$75.85

Light, Water, Tele., \$126.18

Heat, \$29.28—Taxes, None

Rental, \$168.07—Hauling, None

Total ..... 2012.06

Total.....\$1754.24



(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR JUNE, 1929.

Working sheet shows following items:

Wages: M. Rogers, \$30.00—G. Kirby, \$30.00—D. Manning, \$150.00—R. Bontrager, \$150.00—Chas. Tuckett, \$225.00—Steve Sarakoff, \$92.00.

Film Rental: Fox Films 25%, \$196.43—United Artists 25%, \$133.32—Pathe Films 25%, \$56.62—Educational Films 25%, \$11.68—Educational Films, \$10.00—Warner Bros., 50%, \$293.96.

Film Freight: Express, \$12.97.

General Expense: General Expense, \$20.00—Keho, \$5.00.

Replacement, Repairs: Smith's Radio, \$10.79—Rheinharts, \$63.55—E. F. Okland, \$108.70—Davis Mfg., \$30.65—Tongass Trading Co., \$16.00—Elmer Johnson, \$39.60—Solly Mill, \$27.15—Davis Electric, \$51.47—K. Spruce Mill, \$24.76.

Adv: Chronicle, \$96.55—Harrison Reports, \$12.50—Studio, \$4.20.

Light, Water, Tele: C. L. & P. Co., \$105.15.

Heat: Standard Oil Co., \$48.80.

Insurance, Taxes: None.

Rental: Rental all 6%, \$168.07.

Hauling: No Delay Transfer, \$44.25.

Gross Receipts: .....\$5931.00

Totals: Wages, \$677.00

Film Rental, \$702.01

Film Freight, \$12.97

(Testimony of Charles M. Tuckett.)

General Expense, \$25.00

Replacement, Repairs, \$371.67

Adv. \$113.25

Water, Light, Tele., \$105.15

Heat, \$48.80—Rental, \$168.07

Hauling, \$44.25—Total ..... 2270.17

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 Net Profit.....\$3660.83

[332]

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR JULY, 1929.

Working sheet shows following items:

Wages: Steve Serakoff, \$120.00—D. Manning, \$155.00 — Ralph Bontrager, \$150.00 — Chas. Tuckett, \$225.00—G. Kirby, \$30.00—N. Gilbert, \$30.00.

Film Rental: United Artists 25%, \$37.50—Educational 25%, \$45.62—Pathe Film 25%, \$50.78—B. M. B. Bank 25%, \$352.67—Vitaphone Corpn. 50%, \$437.01—Vitaphone Corpn., 50%, \$362.50—Vitaphone Corpn., 50%, \$82.50—Vitaphone Corpn., 50%, \$68.59.

Film Freight: Aaa. S. S. Co., \$15.74.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$57.05.

Light, Water, Tele: C. L. &amp; P. Co., \$106.45.

(Testimony of Charles M. Tuckett.)

Heat: Stand. Oil Co., \$19.52.

Insurance, Taxes: City of Ketchikan, \$742.05.

Rental: Rental all 6%, \$168.07.

Hauling: None.

Gross Receipts: .....\$7519.70

Totals: Wages, \$690.00

Film Rental, \$1437.17

Film Freight, \$15.74

General Expense, None

Repairs, Replacement, None

Adv., \$57.05

Light, Water, Tele., \$106.45

Heat, \$19.52

Insurance, Taxes, \$742.05

Rental, \$168.07—Hauling, None

Total ..... 3236.05

Net Profit.....\$4283.65

[333]

Coliseum Theatre—Ketchikan.

#### EXPENSE ACCOUNT FOR AUG. 1929.

Working sheet shows following items:

Wages: Gertrude Kirby, \$35.00—D. Tuckett, \$35.00—D. Manning, \$150.00—S. Serakoff, \$120.00—R. Bontrager, \$130.00—C. Tuckett, \$225.00—D. Manning, \$80.00.

(Testimony of Charles M. Tuckett.)

Film Rental: Vitaphone Corpn., 50%, \$784.01—  
 United Artists 25%, \$100.00—Fox Film, 25%,  
 \$500.00—Fox Film 25%, \$277.00—Vitaphone  
 50%, \$189.95—Warner Bros. 50%, \$457.90—  
 Warner Bros. 50%, \$205.02—Fox Film 25%,  
 \$399.75—Pathe 25%, \$32.68—Columbia 25%,  
 \$7.02—Columbia 25%, \$11.29—Columbia 25%,  
 \$27.50—Educational Films 25%, \$22.10.

Film Freight: Aaa. S. S. Co., \$66.09.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$83.95.

Light, Water, Tele: C. L. & P. Co. \$113.15.

Heat: None.

Insurance, Taxes: None.

Rental: Rental all 6%, \$168.07.

Hauling: None.

Gross Receipts: .....\$6234.07

Totals: Wages, \$775.00

Film Rental, \$3014.22

Film Freight, \$66.09

General Expense, None

Replacement, Repairs, None

Adv., \$83.95

Light, Water, Tele., \$113.15

Heat, None

Insurance, Taxes, None

Rental, \$168.07

Hauling, None—Total ..... 4220.48

Net Profit.....\$2013.59

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR SETP. 1929.

Working sheet shows following items:

Wages: L. C. Lemmieux, \$225.00—G. Kirby, \$35.00—S. Serakoff, \$120.00—K. Hardeastle, \$35.00—R. Bontrager, \$150.00—Mrs. Oakes, \$35.00.

Film Rental: Vitaphone 50%, \$359.02—Warner Bros., 50%, \$332.00—United Artists 25%, \$137.50—B. M. B. Bank, 25%, \$200.58—Columbia Film 25%, \$6.72—Columbia Film 25%, \$27.50—Pathe Film 25%, \$12.50—Columbia Film 25%, \$12.92—Educational 25%, \$20.00—Tiffany Stahl 25%, \$26.05—Pathe Film 25%, \$68.10—Paramount 25%, \$53.78—Vitaphone Corpn., 50%, \$362.90.

Film Freight: Aaa. S. S. Co., \$11.96.

General Expense: Allied Amusements, \$25.00.

Replacement, Repairs: None.

Adv: Chronicle, \$78.25.

Light, Water, Tele: C. L. & P. Co., \$110.25.

Heat: Standard Oil Co., \$22.23.

Insurance, Taxes: None.

Rental; Rental all 6%, \$168.07.

Hauling: None.

Gross Receipts: .....\$6682.75

Totals: Wages, \$600.00

Film Rental, \$1619.57

Film Freight, \$11.96

General Expense, \$25.00

(Testimony of Charles M. Tuckett.)

Replacement, Repairs, None

Adv., \$78.25

Light, Water, Tele., \$110.25

Heat, \$22.23

Insurance, Taxes, None, Rental, \$168.07

Hauling, None—Total ..... 2635.33

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 Net Profit.....\$4047.42

[335]

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR OCT., 1929.

Working sheet shows following items:

Wages: L. Hulen, \$120.00—L. C. Lemmieux, \$225.00—S. Sarakoff, \$120.00—R. Bontrager, \$150.00—G. Kirby, \$35.00—C. Hardcastle, \$35.00.

Film Rental: Fox Film Co., 25%, \$446.25—United Artists 25%, \$150.00—Columbia Film 25%, \$40.30—Tiffany Stahl 25%, \$5.00—Educational 25%, \$30.00—Paramount Film 25%, \$244.68—Fox Film, 50%, \$231.67—Vitaphone 50%, \$349.30—Pathe Film 25%, \$92.28.

Film Freight: Aaa. S. S. Co., \$37.23.

General Expense: None.

Replacement, Repairs: None.

Adv: Chronicle, \$90.15.

Light, Water, Tele: C. L. &amp; P. Co., \$113.70.

Heat: Standard Oil, \$14.63.

(Testimony of Charles M. Tuckett.)

Insurance, Taxes; None.

Rental: Rental 6% all, \$168.07.

Hauling: None.

Gross Receipts: .....\$7209.70

Totals: Wages, \$685.00

Film Rental, \$1589.48

Film Freight, \$37.23

General Expense, None

Replacement, Repairs, None

Adv., \$90.15

Light, Water, Tele., \$113.70

Heat, \$14.63—Insurance, Taxes, None

Rental, \$168.07—Hauling, None

Total ..... 2698.26

Net Profit.....\$4511.44

[336]

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR NOV. 1929.

Working sheet shows following items:

Wages: L. Luken, \$120.00—L. Lemmieux, \$225.00

—S. Serakoff, \$120.00—R. Bontrager, \$150.00—

G. Kirby, \$35.00—C. Harcastle, \$35.00.

Film Rental: Warner Bros., 50%, \$132.50—Vita-

phone 50%, \$362.20—Warner 50%, \$305.87—

Fox Film 25%, \$221.39—Columbia 25%, \$47.50

—Paramount Films 25%, \$179.35—Pathe Ex-

change 25%, \$109.58.

Film Freight: Aaa. S. S. Co.,	\$20.26.
General Expense:	None.
Replacement, Repairs:	None.
Adv: Chronicle,	\$94.85.
Light, Water, Tele: C. L. & P. Co.,	\$135.50.
Heat: Standard Oil Co.,	\$10.64.
Insurance, Taxes:	None.
Rental: Rental all 6%,	\$168.07.
Hauling:	None
Gross Receipts: .....	\$5705.85
Totals: Wages,	\$685.00
Film Rental,	\$1358.39
Film Freight,	\$20.26
General Expense,	None
Replacement, Repairs,	None
Adv. \$94.85	
Light, Water, Tele.,	\$135.50
Heat, \$10.64—Insurance, Taxes,	None
Rental, \$168.07—Hauling,	None
Total .....	2472.71
	<hr/>
Net Profit.....	\$3233.14
	[337]

Coliseum Theatre—Ketchikan.

#### EXPENSE ACCOUNT FOR DEC. 1929.

Working sheet shows following items:

Wages: L. Luken, \$130.00—L. Lemmieux, \$250.00  
 S. Sarakoff, \$145.00—R. Bontrager, \$175.00—  
 G. Kirby—C. Hardcastle, \$45.00—E. Nowell,  
 \$25.00.



(Testimony of Charles M. Tuckett.)

Film Rental: Educational Film 25%, \$42.17—  
 Paramount Films 25%, \$546.20—Columbia 25%  
 \$36.01—Pathe Exchange 25%, \$129.93—Fox  
 Film 25%, \$183.30—Tiffany Stahl 25%, \$4.05  
 —Vitaphone Corpn., 50%, \$248.75.

Film Freight: Aaa. S. S. Co., \$31.54.

General Expense: None.

Replacement, Repairs: Electrical Research, \$14.00.

Adv: Chronicle, \$103.15—Elks Club \$5.00—Legion,  
 \$10.00.

Lights, Water, Tele: C. L. & P. Co., \$120.30.

Heat: Standard Oil, \$39.64.

Insurance, Taxes: None.

Rental: Rental all 6%, \$168.07.

Hauling: None.

Gross Receipts: .....\$4314.20

Totals: Wages, \$815.00

Film Rental, \$1190.41

Film Freight, \$31.54

General Expense, None

Replacement, Repairs, \$14.00

Adv., \$118.15

Light, Water, Tele., \$120.30

Heat, \$39.64—Insurance, Taxes, None

Rental, \$168.07—Hauling, None

Total ..... 2497.11

Net Profit.....\$1817.09

(Testimony of Charles M. Tuckett.)

Thereupon said Tuckett further testified: Defendant's Exhibit I covers the Coliseum Theatre at Ketchikan from 1929, showing the monthly profits or losses in that Theatre.

Whereupon the following proceedings were had:

Q. I wish you would tell the jury what the total receipts, total expenses and total profits or loss is during each month during that year, commencing with the month of January.

Mr. ROBERTSON: Same objection, if the Court please, and further on the theory that profits are not recoverable in this action.

The COURT: Overruled.

Mr. ROBERTSON: Exception.

Thereupon witness Tuckett testified: For defendant's Ketchikan Coliseum Theatre January, total receipts \$2,203.90, total expenses \$2,168.46, net profit \$37.44; February, total receipts \$2,222.15, total expenses, \$1,876.30, net profit \$345.85; March, total receipts, \$2,489.95, total expenses \$1,293.31, net profit \$1,196.64; April, total receipts \$2,697.50, total expenses \$1,539.29, net profit \$1,158.21; May, total receipts \$3,766.30, total expenses \$2,012.06, net profit, \$1,754.24; June, total receipts \$5,931.00, total expense \$2,270.17, net profit \$3,660.83; July, total receipts \$6,234.07, total expenses \$4,220.48, net profit \$2,013.59; August, total receipts \$7,519.70, total expenses \$3,236.05, net profit \$4,283.65; September, total receipts \$6,682.75, total expenses \$2,635.33, net profit \$4,047.42; October, total receipts \$7,209.70,

(Testimony of Charles M. Tuckett.)

total expenses \$2,698.26, net profit \$4,511.44; November, total receipts \$5,705.85, total expenses \$2,472.71, net profit \$3,233.14; December, total receipts \$4,314.20, total expenses \$2,497.11, net profit \$1,817.09; totals, receipts \$56,977.07, expenses, \$28,917.53, profits \$28,059.54, without depreciation. [339]

Thereupon Witness Tuckett further testified: "Depreciation taken during the year was \$5,517.25 or actual net profit for the year was \$22,342.29. Depreciation was taken from the government reports when they tabulated our accounts; Deputy Collector of Internal Revenue Clausen arrived at the figures through research work with the B. M. Behrends Bank and the actual cost of the property and we took the same depreciation in this statement that we took on defendant's income tax; the first subject of expenses is wages; we listed each employee and marked his monthly wages down; the monthly wages for the first month was \$685.00; the next item of expense is film rental of \$475.27 which was 25% of the film rental paid by the Alaska Film Exchange during the month as all the film run in either of defendant's Coliseum Theatres was paid by the Alaska Film Exchange, which was just another department of defendant's business used as a clearing house to pay for films; defendant would buy his films in Seattle from film exchanges there and had standing orders for so many pictures a month to be shipped usually on the last or first of the month and when the Companies made shipment

(Testimony of Charles M. Tuckett.)

to Alaska, to Ketchikan, at the time they would draw a check against the Alaska Film Exchange which defendant left with the film exchange in Seattle as he would leave signed checks with the different film exchanges that he had accounts with and when they made shipments they would draw checks to cover the amount of the shipment and attach an invoice to the shipment, which we check against the check when it was cashed here, so each Theatre would not have to pay for the film as it used it; and the Alaska Film Exchange would pay in one check a lump sum for film used in all of defendant's theatres, and Ketchikan which used the films first would pay 25% of the cost of the film, then next they would be sent to and used in Juneau, which would pay 50% of the cost, and then the other 25% of the cost of the films was paid by defendant's other theatres or other accounts. The reason why the Juneau Theatre paid more than the Ketchikan Theatre was that was about the best way we [340] could use it at the time and we figured that Juneau was a more stable town than Ketchikan; that segregation of film cost is carried through all these reports.

Whereupon the following proceedings were had:

Q. Was that a fair segregation?

Mr. ROBERTSON: Object as calling for a conclusion.

Mr. HELLENTHAL: Yes, but the witness is an expert on this subject.

(Testimony of Charles M. Tuckett.)

The COURT: He should know that of his own knowledge.

A. Yes, I think it was very fair, in fact Mr. Shearer did the same thing when he was running the business.

Mr. ROBERTSON: Object to what Mr. Shearer did.

The COURT: Objection sustained.

Whereupon Witness Tuckett further testified: The next item of expense is film freight, which each house paid, Ketchikan paying for it as it came from Seattle to Ketchikan, Juneau paying for it as it came to Juneau from Ketchikan, and the other houses paying to send the film outside again. In the Ketchikan Theatre there is a charge of freight of \$21.60, Seattle to Ketchikan. The next item is repairs, which some months is a little high, some not, the building in Ketchikan is on piles and defendant has a great deal of repair on the building in Ketchikan, also in Juneau. It is the actual repairs such as replacing parts damaged by storm, weather or people in the theatre, in fact to keep the theatre up, but not improvements. The next item is advertising, \$91.05 in Ketchikan only; the next item is heat and fuel of \$102.92 for the Ketchikan Theatre that month; the next item is taxes of \$312.50 for this certain period here; but we paid taxes throughout the year of different amounts as they were presented, that being the amount paid that

(Testimony of Charles M. Tuckett.)

month, and taxes being paid during other months which show in each month's statement; the next item is rent, \$168.07, which we figured at 8% of the capital investment as we had to arrive at a net profit and so had to take into consideration the amount of rent or interest on the capital investment. Defendant owns the buildings, both in Juneau and in Ketchikan.

The valuation of the capital investment in Ketchikan [341] in 1933 was arrived at from defendant's records, money expended, and Mr. Clausen's summary of the actual cost when he made the income tax returns, Clausen making the appraisalment himself, and I think he had someone else make an appraisalment. I am not sure, but anyway the internal revenue sanctioned his appraisalment, which is the valuation placed on the buildings and equipment. I really don't know the exact figure of capital investment allocated to Ketchikan, but we have it in the work sheets here somewhere, but it is not a total, there has been depreciation, it was an exact calculation of the actual valuation of the property including everything in 1929, except the land which is not considered, although I would not be sure of that. The rent is calculated for each month by taking 1/12 of 6% of the capital investment for 1929 which we call rent; part of this property was acquired in 1922, and something like \$4000 or \$5000 depreciation already taken out; that was deducted from the original investment and the only thing

(Testimony of Charles M. Tuckett.)

we took into consideration was the balance; that applied to everything, in theory; it was the actual valuation of the capital investment in 1929; he made his appraisements at the time they were gotten and took the depreciation of the years that transpired until the present that he was checking, and figured the amount of depreciation that would allow for the year, also the capital investment of that year; we made an actual appraisement of the Ketchikan Coliseum Theatre property in 1929 and the figure we used represented the result of that appraisal, of which we took, 6% and used that as rent, being in fact, interest on capital investment; the profit and loss for each of the various months of 1929 were arrived at in the same manner on this statement. The document marked defendant's Exhibit I-1 for identification is work sheets and summary statements for the Coliseum Theatre in Ketchikan for the year 1930.

Whereupon said document was offered in evidence, to which plaintiff objected on the ground that it was incompetent, irrelevant [342] and immaterial, which objection was overruled, to which ruling plaintiff then excepted; whereupon said document was received in evidence, marked defendant's Exhibit I-1.

Thereupon Witness Tuckett further testified: Defendant's Exhibit I-1 shows the profit and loss of defendant's Coliseum Theatre in Ketchikan during 1930, and reads as follows: [343]

(Testimony of Charles M. Tuckett.)

## EXHIBIT No. I-1.

## PROFIT AND LOSS STATEMENT

1930

COLISEUM THEATRE

KETCHIKAN, ALASKA

	Total Receipts	Total Expenses	Net Profit	Net Loss
January	\$ 4,462.30	\$ 2,020.75	\$ 2,441.55	
February	3,942.70	2,821.06	1,121.64	
March	4,310.35	1,654.74	2,655.61	
April	4,727.70	1,014.68	3,713.02	
May	4,848.35	2,725.71	2,122.64	
June	4,504.05	1,661.01	2,843.04	
July	4,821.25	2,599.36	2,221.89	
August	4,365.35	1,683.75	2,681.60	
September	5,625.75	1,479.67	4,146.08	
October	4,613.00	2,613.38	1,999.62	
November	3,741.25	1,633.44	2,107.81	
December	2,813.15	1,972.98	840.17	
	<hr/>	<hr/>	<hr/>	<hr/>
	\$52,775.20	\$23,880.53	\$28,894.67	
	23,880.53			
	<hr/>			
Proof	\$28,894.67			

## Memorandum:

Net Profit for year 1930.....	\$28,894.67
(Less) Depreciation taken during 1930.....	5,717.25
	<hr/>
Net Profit for Year 1930.....	\$23,177.42

[344]



(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR JANUARY, 1930.

Working sheet shows following items:

Wages: G. Kirby, \$35.00—C. Hardecastle, \$35.00—

L. Hulen, \$60.00—L. Lemmieux, \$225.00—R.

Bontrager, \$175.00—S. Serakoff, \$130.00.

Film Rental: Tiffany Stahl 25%, \$27.50—Pathe

Film 25%, \$150.25—Tiffany Stahl 25% \$19.05

Warner Bros. 50%, \$311.20 — Educational

Films 25%, \$15.00.

Film Frt: Aaa S. S. Co., \$15.95.

General Expense: None.

Replacement & Repairs: None.

Adv: Ketchikan Chronicle, \$86.65.

Lights, Water, Tele: C. L. & P. Co., \$87.55.

Heat: Standard Oil Co., \$70.62.

Ins. & Taxes: Davis & Johnson, \$125.00—Davis &  
Johnson, \$312.50.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$4,462.30

Totals: Wages, \$660.00

Film Rental, \$523.00

Film Frt., \$15.95.

General Expense, None

Replacement & Repairs, None

Adv., \$86.65

Lights, Water, Tele., \$87.55

Heat, \$70.62—Ins. & Taxes, \$437.50

Rental, \$139.48—Total ..... 2,020.75

Net Profit.....\$2,441.55

[345]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR FEBRUARY, 1930.

Working sheet shows following items:

Wages: G. Kirby, \$35.00—C. Hardeastle, \$35.00—  
L. Lemmeiux, \$250.00—R. Bontrager, \$175.00  
—S. Serakoff, \$130.00.

Film Rental: Paramount Films 25% \$351.08—  
Fox Films 25%, \$151.87—Vitaphone 50%  
\$510.10—Fox Films 50%, \$151.87—Education-  
al Films 25%, \$30.74—Vitaphone Films 25%,  
\$162.72—Famous Players 25%, \$159.24—War-  
ner Bros. 25%, \$67.40—Pathe Exchange 25%,  
\$74.72—Pathe Exchange 25%, \$91.98—Tiffany  
Films 25%, \$21.47.

Film Frt: Aaa S. S. Co., \$20.62.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$76.15.

Lights, Water, Tele: C. L. & P. Co., \$102.50.

Heat: Standard Oil Co., \$84.12.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$3,942.70

Totals: Wages, \$625.00

Film Rental, \$1,773.19

Film Frt., \$20.62

General Expense, None

Replacement & Repairs, None

Adv., \$76.15

Lights, Water, Tele., \$102.50

Heat, \$84.12—Ins. & Taxes, None

Rental, \$139.48—Total ..... 2,821.06

Net Profit.....\$1,121.64

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR MARCH, 1930.

Working sheet shows following items:

Wages: M. Wentworth, \$35.00—J. Hardcastle, \$35.00—Steve Serakoff, \$130.00—R. Bontrager, \$175.00—L. C. Lemmieux, \$250.00.

Film Rental: Paramount Films 25%, \$325.71—Educational 25%, \$15.78—Warner Bros. 25%, \$41.25—Vitaphone 25%, \$187.21—Educational 25%, \$14.80—Pathe Films 25%, \$61.71.

Film Frt: Aaa S. S. Co., \$28.45.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$70.45.

Lights, Water, Tele: C. L. & P. Co., \$90.25.

Heat: Standard Oil, \$54.65.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$4,310.35

Totals: Wages, \$625.00

Film Rental, \$646.45

Film Frt., \$28.45

General Expense, None

Replacement & Repairs, None

Adv., \$70.45

Lights, Water, Tele., \$90.25

Heat, \$54.65—Ins. & Taxes, None

Rental, \$139.48—Total ..... 1,654.74

Net Profit.....\$2,655.61

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR APRIL, 1930.

Working sheet shows following items:

Wages: M. Wentworth, \$35.00—K. Hardeastle,  
\$35.00—L. C. Lemmieux, \$250.00—Ralph Bon-  
trager, \$175.00—S. Sarakoff, \$130.00.

Film Rental: None.

Film Frt: Aaa S. S. Co., \$21.68.

General Expense: None.

Replacement &amp; Repairs: None.

Adv: Chronicle, \$96.55.

Lights, Water, Tele: C. L. &amp; P. Co., \$84.90.

Heat: Standard Oil, \$47.07.

Ins. &amp; Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$4,727.70

Totals: Wages, \$625.00

Film Rental, None—Film Frt., \$21.68

General Expense, None

Replacement &amp; Repairs, None

Adv., \$96.55

Lights, Water &amp; Tele., \$84.90

Heat, \$47.07—Ins. &amp; Taxes, None

Rental, \$139.48—Total ..... 1,014.68

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 Net Profit.....\$3,713.02

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR MAY, 1930.

Working sheet shows following items:

Wages: L. C. Lemmieux, \$250.00—R. Bontrager, \$175.00—S. Sarakoff, \$130.00—M. Wentworth, \$35.00—K. Harcastle, \$35.00.

Film Rental: 1st National Films 25%, \$154.07—  
 Vitaphone Films 25%, \$211.25—Warner Bros. Films 25%, \$378.68—Fox Films 25%, \$291.01  
 Pathe Exchange, 25%, \$34.37—Tiffany Exch. 25%, \$33.97—Vitaphone 25%, \$433.79— Educational 25%, \$25.78.

Film Frt: Alaska S. S., \$19.87.

General Expense: None.

Replacement & Repairs: None.

Adv: Ketchikan Chronicle, \$166.25.

Lights, Water, Tele: C. L. & P. Co., \$176.90.

Heat: Standard Oil, \$35.29.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$4,848.35

Totals: Wages, \$625.00

Film Rental, \$1,562.92

Film Frt., \$19.87

General Expense, None

Replacement & Repairs, None

Adv., \$166.25

Lights, Water, Tele., \$176.90

Ins. & Taxes, None

Rental, \$139.48—Total ..... 2,725.71

Net Profit.....\$2,122.64

[349]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR JUNE, 1930.

Working sheet shows following items:

Wages: M. Wentworth, \$35.00—K. Hardecastle, \$35.00—R. Bontrager, \$175.00—S. Sarakoff, \$130.00—L. Lemmieux, \$250.00.

Film Rental: Vitaphone Films 25% \$289.50—Warner Bros. 25%, \$186.73—1st National Films 25%, \$85.25—Pathe Films 25%, \$95.11—Educational Films 25%, \$21.25.

Film Frt: Aaa S. S., \$10.13.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$104.55.

Lights, Water, Tele: C. L. & P. Co., \$90.25.

Heat: Standard Oil, \$13.76.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$4,504.05

Totals: Wages, \$625.00

Film Rental, \$677.84

Film Frt., \$10.13

General Expense, None

Replacement & Repairs, None

Adv., \$104.55—Heat, \$13.76

Ins. & Taxes, None

Rental, \$139.48—Total ..... 1,661.01

Net Profit.....\$2,843.04

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR JULY, 1930.

Working sheet shows following items:

Wages: R. Bontrager, \$175.00—S. Sarakoff, \$130.00

M. Wentworth, \$35.00—J. Hardecastle, \$35.00—

L. C. Lemmieux, \$250.00.

Film Rental: Tiffany Films 25%, \$36.39—Fox

Films 25%, \$227.25—Vitaphone Films 25%,

\$50.00—Paramount Films 25%, \$522.91—Pathe

Films 25%, \$76.02—Paramount Films 25%,

\$250.00—Educational Films 25%, \$22.94.

Film Frt: Aaa S. S. Co., \$11.99.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$92.20.

Lights, Water, Tele: C. L. & P. Co., \$87.80.

Heat: Standard Oil, \$40.88.

Ins. & Taxes: City of Ketchikan, \$382.50—City of

Ketchikan, \$34.00.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$4,821.25

Totals: Wages, \$625.00

Film Rental, \$1,185.51

Film Frt., \$11.99

General Expense, None

Replacement & Repairs, None

Adv., \$92.20

Lights, Water, Tele., \$87.80

Heat, \$40.88—Ins. & Taxes, \$416.50

Rental, \$139.48—Total ..... 2,599.36

Net Profit.....\$2,221.89

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR AUGUST, 1930.

Working sheet shows following items:

Wages: S. Sarakoff, \$130.00—M. Wentworth, \$35.00—K. Harcastle, \$35.00—L. C. Lemmieux, \$250.00—R. Bontrager, \$175.00.

Film Rental: Educational Films 25%, \$53.00—Fox Films 25%, \$226.19—Pathe Films 25%, \$86.57—Vitaphone Films 25%, \$60.47—Warner Bros. Films 25%, \$92.87—Vitaphone Films 25%, \$133.00.

Film Frt: Aaa S. S. Co., \$19.36.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$121.80.

Lights, Water, Tele: C. L. & P. Co., \$89.85.

Heat: Standard Oil, \$36.16.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$4,365.35

Totals: Wages, \$625.00

Film Rental, \$652.10

Film Frt., \$19.36

General Expense, None

Replacement & Repairs, None

Adv., \$121.80

Lights, Water, Tele., \$89.85

Heat, \$36.16—Ins. & Taxes, None

Rental, \$139.48—Total ..... 1,683.75

Net Profit.....\$2,681.60



(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR SEPTEMBER, 1930

Working sheet shows following items:

Wages: M. Wentworth, \$35.00—L. C. Lemnieux,  
\$250.00—S. Sarakoff, \$130.00—R. Bontrager,  
\$175.00—Jane Grigsby, \$15.50.

Film Rental: Fox Films 25%, \$85.39—Paramount  
Films 25%, \$253.89—Vitaphone Films 25%,  
\$155.68.

Film Frt: Aaa S. S. Co., \$16.39.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$117.95.

Lights, Water, Tele: C. L. & P. Co., \$91.95.

Heat: Standard Oil, \$13.44.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$5,625.75

Totals: Wages, \$605.50

Film Rental, \$494.96

Film Frt., \$16.39

General Expense, None

Replacement & Repairs, None

Adv., \$117.95

Lights, Water, Tele., \$91.95

Heat, \$13.44—Ins. & Taxes, None

Rental, \$139.48—Total ..... 1,479.67

Net Profit.....\$4,146.08

(Testimony of Charles M. Tuekett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR OCTOBER, 1930.

Working sheet shows following items:

Wages: M. Wentworth, \$35.00—L. C. Lemmieux, \$250.00—S. Sarakoff, \$130.00—R. Bontrager, \$175.00—J. Grigsby, \$35.00.

Film Rental: Paramount Films 25%, \$638.92—  
Pathe Films 25%, \$178.02—Educational Films  
25%, \$39.00—Fox Films 25%, \$54.29—Vita-  
phone Films 25%, \$192.44—Paramount Films  
25%, \$434.46—Educational Films 25%, \$29.87.

Film Frt: Aaa S. S. Co., \$25.79.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$118.05.

Lights, Water, Tele: C. L. & P. Co., \$95.50.

Heat: Standard Oil, \$42.56.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$4,613.00

Totals: Wages, \$625.00

Film Rental, \$1,567.00

Film Frt., \$25.79.

General Expense, None

Replacement & Repairs, None

Adv., \$118.05

Lights, Water, Tele., \$95.50

Heat, \$42.56—Ins. & Taxes, None

Rental, \$139.48—Total ..... 2,613.38

Net Profit.....\$1,999.62

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR NOVEMBER, 1930.

Working sheet shows following items:

Wages: L. C. Lemmieux, \$250.00—M. Wentworth, \$35.00—J. Grigsby, \$35.00—R. Bontrager, \$170.00—S. Sarakoff, \$130.00.

Film Rental: Fox Films 25%, \$199.07—Pathe Films 25%, \$86.67—Paramount Films 25%, \$354.41.

Film Frt: Aaa S. S. Co., \$5.67.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$106.00.

Lights, Water, Tele: C. L. & P. Co., \$89.10.

Heat: Standard Oil, \$33.04.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$3,741.25

Totals: Wages, \$620.00

Film Rental, \$640.15

Film Frt., \$5.67

General Expense, None

Replacement & Repairs, None

Adv., \$106.00

Lights, Water, Tele., \$89.10

Heat, \$3304—Ins. & Taxes, None

Rental, \$139.48—Total ..... 1,633.44

Net Profit.....\$2,107.81

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR DECEMBER, 1930.

Working sheet shows following items:

Wages: L. C. Lemmieux, \$250.00—M. Wentworth,  
\$35.00—J. Grigsby, \$35.00—R. Bontrager,  
\$170.00—S. Sarakoff, \$130.00.

Film Rental: Fox Films 25%, \$40.16—Vitaphone  
Films 25%, \$267.80—Pathe Films 25%, \$27.75  
—Paramount Films 25%, \$261.17—Fox Films,  
25%, \$273.49—Pathe Films 25%, \$104.27.

Film Frt: Aaa S. S. Co., \$18.00.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$79.80.

Lights, Water, Tele: C. L. & P. Co., \$98.50.

Heat: Standard Oil, \$42.56.

Ins. & Taxes: None.

Rental: Rental all 6%, \$139.48.

Gross Receipts: .....\$2,813.15

Totals: Wages, \$620.00

Film Rental, \$974.64

Film Frt., \$18.00

General Expense, None

Replacement & Repairs, None

Adv., \$79.80

Lights, Water, Tele., \$98.50

Heat, \$42.56—Ins. & Taxes, None

Rental, \$139.48—Total ..... 1,972.98

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Net Profit.....\$ 840.17

(Testimony of Charles M. Tuckett.)

Witness Tuckett read the first page of Exhibit I-1 to the Jury and testified that he arrived at the depreciation of \$5,717.25 in the same way as in 1929, by taking off at various times the percentages, taking 10% off certain parts of the equipment, 5% off another part of the equipment; that he can explain it from his work sheets; that after depreciation was taken there was a profit of \$23,177.42; that the work sheets attached were made up in the same manner as those attached to 1929, showing the same items, income and expense calculated in the same manner. [356]

Thereupon Witness Tuckett further testified: The depreciation of \$5,717.25 was arrived at in the same way as in 1929 by taking off at various times, percentages, 10% off certain parts of the equipment, 5% off of another; the net profit after taking off depreciation in Ketchikan for that year was \$23,177.42; shows same items, income and expenses calculated in same way as 1929; defendant's exhibits I-2, I-3, and I-4 for identification are profit and loss statements, made by Witness Stabler and myself in the same manner as we made defendant's Exhibit I-1, for defendant's Coliseum Theatre in Ketchikan for the following respective periods, 1931, 1932, and January 1 to May 1, 1933, and were taken from the actual books themselves, defendant's exhibits H-1 to H-7, both inclusive.

Whereupon each of said documents were offered in evidence, to each of which plaintiff objected

(Testimony of Charles M. Tuckett.)

on the ground that it was incompetent, irrelevant and immaterial, which objections were overruled and to each of which rulings plaintiff then excepted, and said documents were then received in evidence marked Defendant's Exhibits I-2, I-3, and I-4, respectively, and read respectively, as follows: [357]

### EXHIBIT No. I-2.

#### PROFIT AND LOSS STATEMENT

1931

COLISEUM THEATRE

KETCHIKAN, ALASKA

	Total Receipts	Total Expenses	Net Profit	Net Loss
January	\$ 3,290.35	\$ 2,457.70	\$ 832.65	
February	3,059.05	2,418.61	640.44	
March	3,422.00	1,760.18	1,661.82	
April	2,987.15	1,613.95	1,373.20	
May	2,741.60	1,794.34	947.26	
June	2,877.05	1,831.52	1,045.53	
July	2,957.80	2,305.85	651.95	
August	2,853.20	1,862.08	991.12	
September	2,966.30	1,955.70	1,010.60	
October	2,607.40	1,098.31	1,509.09	
November	2,312.00	2,300.16	11.84	
December	1,438.35	2,313.71		\$ 875.36
	<hr/>	<hr/>	<hr/>	<hr/>
	\$33,512.25	\$23,712.11	\$10,675.50	\$ 875.36
	23,712.11		875.36	
	<hr/>	<hr/>	<hr/>	<hr/>
Proof	\$ 9,800.14		\$ 9,800.14	

#### Memorandum:

Net Profit for Year 1931.....	\$ 9,800.14
(Less) Depreciation taken during 1931.....	5,717.25
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Net Profit for 1931 .....	<u>\$ 4,082.89</u>

(Testimony of Charles M. Tuckett.)

Witness Tuckett read the foregoing part of Exhibit I-2 to the jury and testified that the profits and losses were calculated in exactly the same manner and by the same methods he calculated the profits and losses in 1930 and 1929, and all shown on the work sheets attached, covering the entire field, and taken from the books as the others were, each individual item taken from the actual books themselves. [358]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR JANUARY, 1931.

Working sheet shows following items:

Wages: L. C. Lemmieux, \$250.00—R. Bontrager, \$87.50—R. Bontrager, \$87.50—M. Wentworth, \$35.00 — Jane Grigsby, \$3500 — S. Sarakoff, \$130.00.

Film Rental: Vitaphone 25%, \$61.24—Fox Films 25%, \$141.87—Tiffany Films 25%, \$9.60—Tiffany Films 25%, \$104.50—Paramount Films 25%, \$382.73—Warner Films 25%, \$250.00—Pathe Films 25%, \$62.69.

Film Frt: Aaa S. S. Co., \$23.56.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$102.75.

Lights, Water, Tele: C. L. & P. Co., \$108.75.

Heat: Union Oil, \$43.62.

Ins. & Taxes: City of Ketchikan, \$416.50.

Rental: Rental all 6%, \$125.89.

Gross Receipts: .....\$3,290.35

Totals: Wages. \$625.00

Film Rental. \$1,012.63

Film Frt. \$23.56

General Expense. None

Replacement & Repairs, None

Adv.. \$102.75

Lights, Water, Tele., \$108.75

Heat, \$43.62

Ins. & Taxes, \$416.50

Rental. \$125.89

Total ..... 2,457.70

Net Profit.....\$ 832.65  
[359]



(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan

EXPENSE ACCOUNT FOR FEBRUARY, 1931.

Working sheet shows following items:

Wages: F. Stanndard, \$175.00 — R. Bontrager, \$175.00—S. Sarakoff, \$130.00—M. Wentworth, \$35.00—J. Grigsby, \$35.00.

Film Rental: Fox Films 25%, \$213.33—Warner Films 25%, \$250.00—Pathe Films 25%, \$55.65 —Warner Films, 25%, \$250.00—Educational Films 25%, \$30.72—Paramount Films 25%, \$347.98—Warner Bros. 25%, \$284.70—Tiffany Films 25%, \$47.89 — Universal Films 25%, \$71.38.

Film Frt:Aaa S. S. Co., \$24.17.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$88.00.

Lights, Water, Tele: C. L. & P. Co., \$78.90.

Heat: None.

Ins. & Taxes: None.

Rental: Rental all 6%, \$125.89.

Gross Receipts: .....\$3,059.05

Totals: Wages, \$550.00

Film Rental, \$1,551.65

Film Frt., \$24.17

General Expense, None

Replacement & Repairs, None

Adv., \$88.00

Lights, Water, Tele., \$78.90

Heat, None

Ins. & Taxes, None

Rental, \$125.89

Total..... 2,418.61

Net Profit.....\$ 640.44

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR MARCH, 1931.

Working sheet shows following items:

Wages: F. Stanndard, \$175.00 — R. Bontrager,  
 \$175.00 — S. Sarakoff, \$130.00 — J. Grigsby,  
 \$30.00—M. Wentworth, \$30.00.

Film Rental: Fox Films 25%, \$213.10—Paramount  
 25%, \$287.56—Warner Bros. 25%, \$256.66—  
 Pathe Films 25%, \$118.05.

Film Frt: None.

General Expense: None.

Replacement &amp; Repairs: None.

Adv: Chronicle, \$56.02.

Lights, Water, Tele: C. L. &amp; P. Co., \$82.85.

Heat: Standard Oil, \$80.05.

Ins. &amp; Taxes: None

Rental: Rental all 6%, \$125.89.

Gross Receipts: .....\$3,422.00

Totals: Wages, \$540.00

Film Rental, \$875.37

Film Frt., None

General Expense, None

Replacement &amp; Repairs, None

Adv., \$56.02

Lights, Water, Tele., \$82.85

Heat, \$80.05

Ins. &amp; Taxes, None

Rental, \$125.89

Total..... 1,760.18

Net Profit.....\$1,661.82

[361]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR APRIL, 1931.

Working sheet shows following items:

Wages: S. Sarakoff, \$130.00—F. Stanndard, \$92.50  
 —F. Stanndard, \$87.50—R. Bontrager, \$87.50—  
 R. Bontrager, \$75.00—M. Wentworth, \$30.00—  
 J. Grigsby, \$30.00.

Film Rental: Tiffany Productions 25%, \$35.38—  
 Warner Bros. 25%, \$224.15—Pathe Films 25%,  
 \$53.78—Paramount Films 25%, \$343.33—Edu-  
 cational Films 25%, \$30.78.

Film Frt: Aaa S. S. Co., \$87.74.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$100.55.

Lights, Water, Tele: C. L. & P. Co., \$79.85.

Heat: None.

Ins. & Taxes: None.

Rental: Rental all 6%, \$125.89.

Gross Receipts: .....\$2,987.15

Totals: Wages, \$532.50

Film Rental, \$687.42

Film Frt., \$87.74

General Expense, None

Replacement & Repairs, None

Adv., \$100.55

Lights, Water, Tele., \$79.85

Heat, None

Ins. & Taxes, None

Rental. \$125.89

Total..... 1,613.95

Net Profit.....\$1,373.20

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR MAY, 1931.

Working sheet shows following items:

Wages: S. Sarakoff, \$130.00—J. Grigsby, \$30.00—  
M. Wentworth, \$30.00 — F. L. Stanndard,  
\$100.00—Chas. Tuckett, \$100.00—Roy Dolgner,  
\$75.00.

Film Rental: Fox Films 25%, \$218.80—Fox Films  
25%, \$268.56—Educational 25%, \$30.77—Tif-  
fany Films 25%, \$47.67—Pathe Films 25%,  
\$72.69—Warner Bros. 25%, \$330.42.

Film Frt: None.

General Expense: None.

Replacement &amp; Repairs: None.

Adv: Chronicle, \$98.65.

Lights, Water, Tel: C. L. &amp; P. Co., \$90.15.

Heat: Standard Oil, \$44.74.

Ins. &amp; Taxes: None.

Rental: Rental all 6%, \$125.89.

Gross Receipts: .....\$2,741.60

Totals: Wages, \$465.00

Film Rental, \$968.91

Film Frt., None

General Expense, None

Replacement &amp; Repairs, None

Adv., \$98.65

Lights. Water &amp; Tele., \$90.15

Heat, \$44.74

Ins. &amp; Taxes, None

Rental. \$125.89

Total..... 1,794.34

Net Profit.....\$ 947.26

[363]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

EXPENSE ACCOUNT FOR JUNE, 1931.

Workin sheet shows following items:

Wages: S. Sarakoff, \$130.00—C. Tuckett, \$200.00—  
J. Grigsby, \$30.00—M. Wentworth, \$30.00.

Film Rental: Fox Films 25%, \$200.06—Educational  
Films 25%, \$37.50 — Universal Films 25%,  
\$73.15—Paramount Films 25%, \$338.98—War-  
ner Bros. Films 25%, \$411.17 — Paramount  
Films 25%, \$58.69—Pathe Films 25%, \$54.71.

Film Frt: Aaa S. S. Co., \$16.56.

General Expense: None.

Replacement & Repairs: None.

Adv: Chronicle, \$125.65.

Lights, Water, Tele: None.

Heat: Stand. Oil, \$54.42—Stand. Oil, \$44.74.

Ins. & Taxes, None.

Rental: Rental all 6%, \$125.89.

Gross Receipts: .....\$2,877.05

Totals: Wages: \$290.00

Film Rental, \$1,174.26

Film Frt., \$16.56

General Expense, None

Replacement & Repairs, None

Adv., \$125.65

Lights, Water, Tele., None

Heat, \$99.16

Ins. & Taxes, None

Rental, \$125.89

Total..... 1,831.52

Net Profit.....\$1,045.53

[364]

(Testimony of Charles M. Tuckett.)

Coliseum Theatre—Ketchikan.

## EXPENSE ACCOUNT FOR JULY, 1931.

Working sheet shows following items:

Wages: C. Tuckett, \$200.00—M. Wentworth, \$30.00  
—H. McLean, \$40.00—S. Sarakoff, \$120.00.

Film Rental: Fox Films 25%, \$264.17—Paramount  
25%, \$321.10—Tiffany Films 25%, \$45.37—Tif-  
fany Films 25%, \$27.38—Educational Films  
25%, \$36.31—Warner Bros. 25%, \$329.50—  
Pathe Films 25%, \$121.47.

Film Frt: Aaa S. S. Co., \$25.68.

General Expense: None.

Replacement &amp; Repairs: None.

Adv: Chronicle. \$123.94.

Lights, Water, Tele: C. L. &amp; P. Co., \$88.60.

Heat: Stand. Oil Co., \$123.94.

Ins. &amp; Taxes: City of Ketchikan, \$282.50.

Rental: Rental all 6%, \$125.89.

Gross Receipts: .....\$2,957.80

Totals: Wages, \$390.00

Film Rental, \$1,145.30

Film Frt., \$25.68

General Expense, None

Replacement &amp; Repairs, None

Adv., \$123.94

Lights, Water, Tele., \$88.60

Heat, \$123.94.

Ins. &amp; Taxes, \$282.50

Rental, \$125.89

Total.....\$2,305.85

Net Profit.....\$ 651.95

[365]